

# **BANKRUPTCY FEE COMPENDIUM II**

Revised September 17, 2001

# **BANKRUPTCY FEE COMPENDIUM 2nd**

## **Contents**

### **Part A: In General. . . . . -1-**

1.	Purpose. . . . .	-1-
2.	Scope. . . . .	-1-
3.	Organization. . . . .	-1-
4.	Statutory Authority. . . . .	-1-
5.	Previous Judicial Conference Action. . . . .	-1-
	A. Amendments to Electronic Access Fees. . . . .	-1-
	B. Amendments in 1997. . . . .	-2-
	C. Amendments in 2000. . . . .	-2-
	D. Amendments in 2001. . . . .	-2-
6.	Listing of Fees Due. . . . .	-3-
	A. Fees Due upon Filing . . . . .	-3-
	B. Fees for Splitting Cases . . . . .	-3-
	C. Fees for Converting Cases . . . . .	-3-
	D. Procedure for Interdistrict Transfers. . . . .	-4-
	E. Fees for Miscellaneous Contested Proceedings. . . . .	-4-
	F. Fees for Filing Adversary Proceedings . . . . .	-4-
	G. Fees for Filing Appeals . . . . .	-4-
	H. Fees for Dismissals. . . . .	-4-
	I. Fees for Reopening Cases . . . . .	-4-
	J. Miscellaneous Administrative Fees. . . . .	-4-
	(1) Services Provided by Persons or Facilities Outside the Court. . . . .	-4-
	(2) Noticing by Person Other Than the Clerk. . . . .	-5-
	K. Fees in Bankruptcy Act Cases . . . . .	-5-
7.	Exceptions to the Fee. . . . .	-5-
	A. Limited Exception for Services Rendered on Behalf of the United States. . . . .	-5-
	(1) No Exemption for Electronic Access Services. . . . .	-5-
	(2) No Exemption for Copy Services where Electronic Access Is Available. . . . .	-6-
	B. Limited Exemptions for Case Trustees. . . . .	-6-
	(1) Motions to Convert. . . . .	-6-
	(2) Adversary Complaints. . . . .	-6-
	(3) Reopening Fees. . . . .	-6-
	(4) Electronic Access Fee. . . . .	-6-
	(5) Reimbursement from the Estate. . . . .	-6-
8.	Waivers Must Be Authorized. . . . .	-7-
9.	Prohibition Against Refunding Filing Fees. . . . .	-7-
10.	Installment Payments . . . . .	-7-
11.	<i>In Forma Pauperis</i> . . . . .	-7-
12.	Procedure When the Fee Fails to Accompany the Filing. . . . .	-7-

13.	Accounting .....	<u>-7-</u>
	A. United States Trustee System Fund. ....	<u>-8-</u>
	(1) Quarterly Fees in Chapter 11 Cases. ....	<u>-8-</u>
	(2) Bankruptcy Administrator States. ....	<u>-8-</u>
	(3) Accounting Treatment .....	<u>-8-</u>
	B. Special Fund for the Judiciary. ....	<u>-8-</u>

## **Part B: Fees for Initial Filings ..... -9-**

1.	Fees Due .....	<u>-9-</u>
	A. Summary of Fees Due upon Filing. ....	<u>-9-</u>
	B. Filing Fees. ....	<u>-10-</u>
	C. Miscellaneous Administrative Fee .....	<u>-10-</u>
	(1) Due Only with New Cases. ....	<u>-10-</u>
	(2) Trustees May Move for Reimbursement. ....	<u>-10-</u>
	D. Chapter 7 Trustee Surcharge. ....	<u>-11-</u>
	(1) Accounting. ....	<u>-11-</u>
	(2) Due for All Cases Closed. ....	<u>-11-</u>
	E. Petition Ancillary to Foreign Proceedings. ....	<u>-11-</u>
	F. Fees in Involuntary Cases. ....	<u>-11-</u>
	(1) Petitioners in Involuntary Cases Are Ineligible for Installment Payments. ....	<u>-12-</u>
	G. Joint Petitions. ....	<u>-12-</u>
	(1) Eligibility. ....	<u>-12-</u>
	(2) Two Filing Fees for Serial Filings by Husbands and Wives. ....	<u>-12-</u>
2.	Waiving or Refunding Fee Prohibited. ....	<u>-12-</u>
3.	Payments in Installments. ....	<u>-12-</u>
	A. Eligibility and Maximum Number of Payments. ....	<u>-12-</u>
	(1) Number of Installments Permitted. ....	<u>-12-</u>
	(2) Lump Sum Payments. ....	<u>-13-</u>
	(3) Application of the Installment Payments .....	<u>-13-</u>
	(4) Petitioners in Involuntary Cases Are Ineligible for Installment Payments .....	<u>-13-</u>
	B. Procedure. ....	<u>-13-</u>
	(1) Requirements of the Motion. ....	<u>-13-</u>
	(2) Debtors' Applications Should Conform to Official Form 3. .	<u>-13-</u>
	(3) Both Spouses Must Sign the Application. ....	<u>-14-</u>
	(4) The Court Must Act Before the Meeting of Creditors. ....	<u>-14-</u>
	C. Chapter 13 Cases. ....	<u>-14-</u>
	D. Penalty for Non-Payment. ....	<u>-14-</u>
	(1) Dismissals. ....	<u>-14-</u>
	(2) Refiling Prohibited for 180 days. ....	<u>-14-</u>
	(3) Refiling After 180 Days. ....	<u>-15-</u>
	(4) The Court's Claim in a Subsequent Bankruptcy. ....	<u>-15-</u>
	(5) Federal Claims Collections. ....	<u>-15-</u>

	(6)	Clerk's Duty of Due Diligence. ....	-15-
	(7)	Notation in Order of Dismissal. ....	-16-
4.		<i>In Forma Pauperis</i> Petitions. ....	-16-
5.		Procedure When Petition Not Accompanied by Fee. ....	-16-
6.		Accounting ....	-17-
	A.	Generally. ....	-17-
		(1) Funds Credited to United States Trustee System Fund. ....	-17-
		(2) Bankruptcy Administrator Districts. ....	-17-
		(3) Funds Credited to the Special Fund for the Judiciary. ....	-17-
		(4) Cases in Which the Judiciary Receives No Portion of the Fee. ....	-18-
	B.	Chapter 7 Cases. ....	-18-
		(1) Filing Fee - \$155.00 (28 U.S.C. § 1930(a)) ....	-18-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)). ....	-18-
		(3) Trustee Surcharge - \$15.00. ....	-18-
	C.	Chapter 9 Municipal Debt. ....	-19-
		(1) Filing Fee - \$800.00 (28 U.S.C. § 1930(a)(2)) ....	-19-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)) ....	-19-
	D.	Chapter 11 (Non-Railroad). ....	-19-
		(1) Filing Fee (Non-Railroad) - \$800.00 (28 U.S.C. § 1930(a)(3)) ....	-19-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)) ....	-19-
	E.	Chapter 11 (Railroad). ....	-19-
		(1) Filing Fee (Railroad) - \$1,000. ....	-20-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)) ....	-20-
	F.	Chapter 12 (Family Farmer) ....	-20-
		(1) Filing Fee - \$200.00 (28 U.S.C. § 1930(a)(5)) ....	-20-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)) ....	-20-
	G.	Chapter 13 (Wage Earner) ....	-20-
		(1) Filing Fee - \$155.00 (28 U.S.C. § 1930(a)(1)) ....	-20-
		(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)) ....	-21-
	H.	General Questions Regarding Payments to Chapter 7 Trustees. ....	-21-
		(1) General Rule ....	-21-
		(2) Cases Filed Before October 22, 1995. ....	-21-
		(3) Cases Filed on and After October 22, 1995. ....	-21-
		(4) In Converted Chapter 7 Cases ....	-22-
		(5) If No Trustee is Appointed. ....	-22-
		(6) If Multiple Trustees Serve. ....	-22-
		(7) Split Cases. ....	-23-
		(8) <i>Sua Sponte</i> Conversions. ....	-23-
		(9) United States Trustee Serving as the Chapter 7 Trustee ....	-23-
		(10) Reopened Cases ....	-24-
		(11) Installment Payment Defaults. ....	-24-
	I.	General Questions Regarding Collection of the Chapter 7 Trustee Surcharge. ....	-24-
		(1) Joint Cases ....	-24-

(2)	Splits. ....	<u>-24-</u>
(3)	Involuntary Cases ....	<u>-24-</u>
(4)	Reopened Cases ....	<u>-24-</u>

## **Part C. Fee upon Splitting Cases . . . . . -25-**

1.	The Fee Due. ....	<u>-25-</u>
	A. Amount of the Fee. ....	<u>-25-</u>
	(1) Chapter 7 and 13 Cases. ....	<u>-25-</u>
	(2) Chapter 12 Cases. ....	<u>-25-</u>
	(3) Chapter 11 Cases. ....	<u>-25-</u>
	B. Consolidated Cases. ....	<u>-25-</u>
2.	Exceptions to the Fee ....	<u>-25-</u>
3.	Accounting. (Credit fund 510000.) ....	<u>-25-</u>

## **Part D. Fees for Converting Cases . . . . . -26-**

1.	Fees Due. ....	<u>-26-</u>
	A. Conversions to Chapter 11. ....	<u>-26-</u>
	B. Conversions to Chapter 7. ....	<u>-26-</u>
	(1) Fee Due upon Filing ....	<u>-27-</u>
	(2) No Refund upon Denial of the Motion. ....	<u>-27-</u>
	(3) Fee Collected when the Motion to Convert Is Combined . . .	<u>-27-</u>
	(4) Clerk May Not Reject the Debtor's Motion to Convert for Non-payment ....	<u>-27-</u>
	(5) No Fee Due upon <i>Sua Sponte</i> Conversions. ....	<u>-27-</u>
	(6) Exemption for Case Trustee. ....	<u>-27-</u>
	(7) Exemption for United States Trustee and Bankruptcy Administrators. ....	<u>-27-</u>
	(8) Conversion from Chapters 12 and 13. ....	<u>-28-</u>
	(9) Conversion from Chapter 11. ....	<u>-28-</u>
	(10) Special Instruction for Handling \$45 Trustee Fee and \$15 Trustee Surcharge in Converted Cases. ....	<u>-28-</u>
2.	Notice to the Financial Deputy ....	<u>-28-</u>
3.	Accounting. ....	<u>-28-</u>
	A. Conversions to Chapter 7 from Any Other Chapter. ....	<u>-28-</u>
	(1) Entry. ....	<u>-28-</u>
	(2) When the Trustee Is the Movant. ....	<u>-29-</u>
	(3) Reporting. ....	<u>-29-</u>
	(4) When the Original Petition Is Filed in a Chapter Other Than Chapter 7. ....	<u>-29-</u>
	(5) Note on Cases Filed Before the United States Trustee's Entry on Duty. ....	<u>-29-</u>
	B. Conversions from Chapter 7 or Chapter 13 to Chapter 11 - \$650.00 .	<u>-30-</u>
	(1) Entries. ....	<u>-30-</u>

C.	Trustee Fees upon Conversion from Chapter 7 to Another Chapter. . . . .	<u>-30-</u>
(1)	Trustee Entitled to Payment. . . . .	<u>-30-</u>
(2)	Timing of the Payment to the Chapter 7 Trustee . . . . .	<u>-30-</u>
(3)	Entries when No Chapter 7 Trustee Was Appointed. . . . .	<u>-30-</u>

## **Part E. Fees for Interdistrict Transfers. . . . . -31-**

1.	No Fee Is Due. . . . .	<u>-31-</u>
2.	Transfer of Collected Fees and Case File. . . . .	<u>-31-</u>
3.	Accounting . . . . .	<u>-31-</u>
A.	Transferring Court. . . . .	<u>-31-</u>
B.	Receiving Court. . . . .	<u>-32-</u>

## **Part F. Miscellaneous Contested Proceedings Fees -32-**

1.	Fees Due. . . . .	<u>-32-</u>
A.	Application of the Fee. . . . .	<u>-32-</u>
B.	Motions to Withdraw the Reference . . . . .	<u>-33-</u>
2.	Exemptions for Certain Motions to Modify the Automatic Stay. . . . .	<u>-33-</u>
A.	Co-debtor Stays. . . . .	<u>-33-</u>
B.	Approvals of Stipulations . . . . .	<u>-33-</u>
C.	Family Support Obligations. . . . .	<u>-33-</u>
3.	Exemption for Trustees' Notice of Abandonment. . . . .	<u>-33-</u>
A.	Creditors' Request for Abandonment . . . . .	<u>-34-</u>
4.	Combined Motions for Relief from the Automatic Stay and to Compel the Trustee to Abandon Property. . . . .	<u>-34-</u>
5.	Accounting. . . . .	<u>-34-</u>

## **Part G. Fees for Filing Adversary Proceedings. . -34-**

1.	Fees Due. . . . .	<u>-34-</u>
A.	Removals to Bankruptcy Court. . . . .	<u>-34-</u>
B.	Adversary Proceeding Initiated by a Trustee (or by a Debtor in Possession Acting for the Benefit of the Bankruptcy Estate). . . . .	<u>-34-</u>
(1)	Fees Must Be Collected. . . . .	<u>-35-</u>
(2)	Fee Payable Only from the Estate. . . . .	<u>-35-</u>
(3)	Fee Deferred for Insolvent Estates. . . . .	<u>-35-</u>
(4)	Fee May Be Payable from a Chapter 13 Plan. . . . .	<u>-35-</u>
(5)	Fee is Due Even if the Action Is Unsuccessful. . . . .	<u>-35-</u>
(6)	Fee Is Given an Administrative Priority in Distribution. . . . .	<u>-35-</u>
(a)	Chapter 11 Confirmations. . . . .	<u>-36-</u>
(b)	Chapter 12 and 13 Confirmations. . . . .	<u>-36-</u>
(c)	Cases Converted to Chapter 7. . . . .	<u>-36-</u>
C.	Exceptions to the Fee. . . . .	<u>-36-</u>

(1)	No Fee Is Due When Either a Debtor in Possession Acting for the Benefit of an Individual Debtor or an Individual Debtor Initiates the Adversary Proceeding. . . . .	<u>-36-</u>
(a)	Actions for Which the Clerk Must Collect the Fee. . .	<u>-36-</u>
(b)	No Fee Is Due with Dischargeability Complaints in Chapter 11. . . . .	<u>-37-</u>
(c)	No Fee Is Due with Dischargeability Complaints in Chapter 12 Cases. . . . .	<u>-37-</u>
(d)	The Nature of Some Actions Determines the Exemption.	<u>-37-</u>
(2)	No Fee Is Due when the Adversary Proceeding Is Filed by the United States. . . . .	<u>-37-</u>
(a)	The United States. . . . .	<u>-37-</u>
(b)	Government Corporations . . . . .	<u>-37-</u>
(3)	No Fee Is Due when Cases Are Transferred. . . . .	<u>-38-</u>
(4)	No Fee Is Due for Third Party Complaints and Other Actions to Add Parties after an Adversary Proceeding Has Been Commenced. . . . .	<u>-38-</u>
(5)	No Fee Is Due for Transfers from the District Court to the Bankruptcy Court in the Same District. . . . .	<u>-39-</u>
(6)	No Fee Is Due for Securities Investor Protection Act. . . . .	<u>-39-</u>
(a)	Limitation to the Exception. . . . .	<u>-39-</u>
(7)	No Fee Is Due from Child Support Creditors. . . . .	<u>-39-</u>
2.	Prohibition Against Refunding the Filing Fee. . . . .	<u>-39-</u>
3.	<i>In Forma Pauperis</i> Complaints. . . . .	<u>-39-</u>
A.	Only the Prepayment of the Fee Is Waived. . . . .	<u>-40-</u>
4.	Procedure if Complaint Not Accompanied by Fee. . . . .	<u>-40-</u>
5.	Accounting. . . . .	<u>-40-</u>

## **Part H. Fees for Filing Appeals. . . . . -40-**

1.	Fees Due. . . . .	<u>-40-</u>
A.	Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Code. . . . .	<u>-40-</u>
B.	Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Act. . . . .	<u>-41-</u>
C.	Appellate Docketing Fee. . . . .	<u>-41-</u>
D.	Cross Appeal Docketing Fee. . . . .	<u>-41-</u>
E.	Exemption for the United States. . . . .	<u>-42-</u>
F.	Exemption for Child Support Creditors. . . . .	<u>-42-</u>
G.	Exception for Motions for Leave to Appeal. . . . .	<u>-42-</u>
2.	Prohibition Against Refunding either the Appellate Notice Fee or the Appellate Docketing Fee. . . . .	<u>-42-</u>
A.	Premature Appeals. . . . .	<u>-42-</u>
3.	<i>In Forma Pauperis</i> Appeals. . . . .	<u>-43-</u>
4.	Procedure if Appeal Not Accompanied by Fee. . . . .	<u>-43-</u>

5.	Accounting. ....	<u>-43-</u>
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## **Part I. Fees Due upon Dismissal . . . . . -43-**

1.	Fees Due (Filing Fee and Installment Payments). ....	<u>-43-</u>
2.	Fees Due to the Chapter 7 Trustee. ....	<u>-43-</u>
	A. Chapter 7 Dismissals Before the Meeting of Creditors. ....	<u>-44-</u>
	(1) Pre-October 22, 1995 Cases. ....	<u>-44-</u>
	(2) Post-October 22, 1995 Cases. ....	<u>-44-</u>
3.	Accounting. ....	<u>-44-</u>
	A. Chapter 7 Dismissals before a Trustee Is Appointed. ....	<u>-44-</u>

## **Part J. Fees for Reopening Cases. . . . . -44-**

1.	Fees Due. ....	<u>-44-</u>
	A. Bankruptcy Code Cases. ....	<u>-45-</u>
	(1) Fee Not Refunded. ....	<u>-45-</u>
	(2) Exemption to Correct an Administrative Error. ....	<u>-45-</u>
	(3) Exemption for Actions Related to Discharge. ....	<u>-45-</u>
	(4) Exemption for the U.S. Trustee and Bankruptcy Administrators. ....	<u>-46-</u>
	(5) No Exemption for Private Trustee ....	<u>-46-</u>
	(a) Waiver or Deferred Payment Permitted for Private Trustee. ....	<u>-46-</u>
	(b) Trustee Reimbursed upon Recovery. ....	<u>-46-</u>
	(6) No Exemption for Reopening to Add a Creditor. ....	<u>-47-</u>
	B. Bankruptcy Act Cases. ....	<u>-47-</u>
	C. Unpaid Balance of Original Filing Fee in Reopened Case. ....	<u>-47-</u>
2.	Accounting. ....	<u>-47-</u>
	A. Same as the Original Filing Fee. ....	<u>-47-</u>
	(1) Allocation of Filing Fee in Reopened Case. ....	<u>-47-</u>
	(2) \$45 Trustee Fee in Reopened Case. ....	<u>-47-</u>
	(3) Source of \$15 Chapter 7 Trustee Surcharge ....	<u>-48-</u>

## **Part K. Miscellaneous Administrative Fees. . . -48-**

1.	General Discussion. ....	<u>-48-</u>
2.	Accounting Generally. ....	<u>-48-</u>
3.	Waivers Must Be Authorized. ....	<u>-48-</u>
4.	Fees Due. ....	<u>-49-</u>
	A. Reproduction Fee (Item 1 - Miscellaneous Fee Schedule) ....	<u>-49-</u>
	(1) Fee Applicable to Paper Copies of Electronic Records. ....	<u>-49-</u>
	(2) Exemption for Federal Agencies ....	<u>-49-</u>
	(3) Voluminous Requests by Federal Agencies. ....	<u>-49-</u>
	(4) Documents Faxed by the Clerk's Office. ....	<u>-49-</u>
	(5) Exemption if an Outside Agency Produces Copies. ....	<u>-49-</u>
	(6) FEMA Waiver ....	<u>-49-</u>



	(7) Accounting - 28 U.S.C. § 1930(b)(1) .....	<u>-50-</u>
B.	Certification Fee (Item 2 - Miscellaneous Fee Schedule) .....	<u>-50-</u>
	(1) Comment .....	<u>-50-</u>
	(2) Combined Search/Certification. ....	<u>-50-</u>
	(3) Accounting. - 28 U.S.C. § 1930(b)(2) .....	<u>-50-</u>
C.	Reproducing Recordings of Proceedings (Item 3 - Miscellaneous Fee Schedule)	
	.....	<u>-50-</u>
	(1) Comment .....	<u>-50-</u>
	(2) Federal Agency Exemptions. ....	<u>-51-</u>
	(3) Accounting - 28 U.S.C. § 1930(b)(3). ....	<u>-51-</u>
D.	Amendments to Scheduled, List of Creditors, Matrix, or Mailing Lists (Item	
	4 - Miscellaneous Fee Schedule) .....	<u>-51-</u>
	(1) The Fee Is Assessed Per Filing .....	<u>-51-</u>
	(2) No Fee to Change Addresses. ....	<u>-51-</u>
	(3) No Fee Charged to Add Attorney. ....	<u>-51-</u>
	(4) Waivers for Good Cause. ....	<u>-52-</u>
	(5) Exception for Chapter 13 Cases Converted to Chapter 7. ...	<u>-52-</u>
	(6) Accounting - 28 U.S.C. § 1930(b)(4). ....	<u>-52-</u>
E.	Records Search (Item 5 - Miscellaneous Fee Schedule). ....	<u>-52-</u>
	(1) Fee Independent of Request for Certification. ....	<u>-52-</u>
	(2) Application of the Fee. ....	<u>-53-</u>
	(3) Exemption for Federal Agencies. ....	<u>-53-</u>
	(4) Public Use of Automatic Data Bases Encouraged. ....	<u>-53-</u>
	(5) Accounting - 28 U.S.C. § 1930(b)(5) .....	<u>-53-</u>
F.	Fee for Filing or Indexing Any Paper Not in a Case or Proceeding for Which	
	a Filing Fee Has Been Paid (Item 7 - Miscellaneous Fee Schedule). ...	<u>-53-</u>
	(1) Application of the Fee .....	<u>-54-</u>
	(2) Foreign Judgments .....	<u>-54-</u>
	(3) Dual Registrations of Judgments .....	<u>-54-</u>
	(4) Accounting - 28 U.S.C. § 1930(b)(7) .....	<u>-54-</u>
G.	Microfilm (Item 12 - Miscellaneous Fee Schedule) .....	<u>-54-</u>
H.	Retrieval from Offsite Storage (Item 13 - Miscellaneous Fee Schedule)	<u>-55-</u>
	(1) Reopened Cases. ....	<u>-55-</u>
	(2) Consolidated Cases. ....	<u>-55-</u>
	(3) Premature Retirements. ....	<u>-55-</u>
	(4) Referrals to Storage Facilities .....	<u>-55-</u>
I.	Returned Check Fee (Item 14 - Miscellaneous Fee Schedule). ....	<u>-55-</u>
	(1) Accounting .....	<u>-55-</u>
	(2) Comment: .....	<u>-56-</u>
J.	Fee for Providing Local Rules .....	<u>-56-</u>
K.	Registry Funds Fee (Item 18 - Miscellaneous Fee Schedule). ....	<u>-56-</u>
L.	Repealed Provisions: .....	<u>-56-</u>

## **Part L. Fee Schedule for Electronic Public Access -56-**

1.	Fee for Electronic Access to Court Documents .....	<a href="#">-56-</a>
2.	Printing Electronic Records. ....	<a href="#">-57-</a>
3.	PACER Searches .....	<a href="#">-57-</a>
4.	Comment: .....	<a href="#">-57-</a>
5.	Application of the Fee. ....	<a href="#">-57-</a>
6.	Exemptions Allowed. ....	<a href="#">-58-</a>
	A. Judicial Conference Guidelines. ....	<a href="#">-58-</a>
	B. Procedure. ....	<a href="#">-58-</a>
	C. The Clerk's Role. ....	<a href="#">-58-</a>

## **Part M. Fees for Bankruptcy Act Cases. .... [-58-](#)**

### **ATTACHMENTS ..... [-60-](#)**

EXHIBIT B-1		
	28 U.S.C. § 1930 .....	<a href="#">-60-</a>
EXHIBIT B-2		
	Bankruptcy Court Miscellaneous Fee Schedule .....	<a href="#">-62-</a>
EXHIBIT B-3		
	Electronic Public Access Miscellaneous Fee Schedule .....	<a href="#">-65-</a>
EXHIBIT B-4		
	Schedule of Filing Fees for Cases Under the Bankruptcy Act of 1898 (1) .....	<a href="#">-66-</a>
EXHIBIT B-5		
	Summary of Allocation of Filing Fees, Administrative Fee, and Trustee Surcharge. ....	<a href="#">-67-</a>
EXHIBIT B-6		
	FORM 3. APPLICATION AND ORDER TO PAY FILING FEE IN INSTALL- MENTS .....	<a href="#">-68-</a>
EXHIBIT B-7		
	Percentage Allocation of Chapter 7 Fees Due at Filing .....	<a href="#">-70-</a>
EXHIBIT B-8		
	Search Fee Guidelines for Bankruptcy Courts .....	<a href="#">-72-</a>
EXHIBIT B-9		
	Appearance of Child Support Creditor or Representative (Form B281) .....	<a href="#">-76-</a>
EXHIBIT C-1		
	Chapter X. ADMINISTRATIVE FEES AND SERVICES. Part C. Utilization of Resources Outside the Judiciary. ....	<a href="#">-77-</a>
EXHIBIT C-2		
	"JUDICIAL CONFERENCE OF THE UNITED STATES" GUIDELINES ON NOTICING .....	<a href="#">-79-</a>
EXHIBIT C-3		
	GUIDELINES ON USE OF OUTSIDE FACILITIES AND SERVICES .....	<a href="#">-83-</a>

## **Part A: In General.**

1. **Purpose.** This *Bankruptcy Fee Compendium* discusses the fees collected by the bankruptcy clerks. It will guide bankruptcy clerks in collecting fees for filing bankruptcy cases, in filing certain proceedings within or related to bankruptcy cases, and in delivering services either by the clerk's office or under the clerk's supervision.
2. **Scope.** This information applies to all bankruptcy courts, to all bankruptcy operations in courts having consolidated bankruptcy and district court clerk's offices, and to all district courts exercising bankruptcy jurisdiction because the court either withdrew the reference or is entertaining a bankruptcy appeal. This information applies to all cases and to all proceedings in cases under title 11, United States Code, (the "Bankruptcy Code"). This information also applies to proceedings related to cases under title 11 when the bankruptcy court conducts those proceedings.
3. **Organization.** As far as practical, this *Compendium* organizes fee information by transaction. Historical information, such as legislative history, and parenthetical information, such as citations, are footnoted.
4. **Statutory Authority.** The statutory authority for the initial filing fees is 28 U.S.C. § 1930(a). The Judicial Conference Schedule of Additional Fees for Bankruptcy Courts (Bankruptcy Court Miscellaneous Fee Schedule) prescribes fees for filing an adversary proceeding, filing a motion to reopen a case, filing an ancillary petition under §304,<sup>1</sup> filing certain motions, and for certain services provided by the clerk.<sup>2</sup> The Bankruptcy Court Miscellaneous Fee Schedule is authorized by 28 U.S.C. § 1930(b).
5. **Previous Judicial Conference Action.** In 1988, 1989, and 1990, the Judicial Conference prescribed new fees for using the court's registry fund, for dividing a joint case filed under 11 U.S.C. § 302(a), for filing a motion to terminate, annul, modify, or condition the automatic stay, for filing a motion to compel abandonment of estate property, for filing a motion to withdraw the reference under 28 U.S.C. § 157(d), for docketing a cross appeal, and for electronic access to the courts' computer data.
  - A. **Amendments to Electronic Access Fees.** The Judicial Conference modified the electronic access fee in March 1991, March 1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), and March 1996 (reducing the fee

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<sup>1</sup>All statutory citations are to the Bankruptcy Code unless indicated otherwise.

<sup>2</sup>The Bankruptcy Court Miscellaneous Fee Schedule applies also to cases filed under the Bankruptcy Act of 1898. (Congress empowered the Judicial Conference to prescribe similar fees under §§ 40c.(2), 40c.(3), 241, and 491 of the Act.)

to \$.60 per minute). These fees go into a special fund. The judiciary has direct access to the revenue these fees generate.

- B. Amendments in 1997.** In September 1997, the Judicial Conference modified the Bankruptcy Court Miscellaneous Fee Schedule substantially. The Conference doubled the fee to exemplify a document and modified the fee to amend a debtor's schedules. The Conference eliminated the 50 cents per notice fee and expanded the \$30 administrative fee to cover all cases filed under Title 11 (including involuntary cases and cases ancillary to foreign proceedings). The Conference repealed the \$5 notice of appeal fee for Act cases (but not Code cases), the claims processing fee, and the fee for bankruptcy court staff transcribing a record. The Conference modified the fees to docket an appeal and to docket a cross appeal to track the fee to file an appeal to the court of appeals. The Conference revised the fee to file a motion to lift stay, etc., replacing the dollar amount with a reference to one-half the amount of the civil action filing fee. The Conference modified the reopening fee, now new Item 9 on the Bankruptcy Court Miscellaneous Fee Schedule, to provide that the fee is for the motion to reopen and to include a provision for court waiver or deferral. These changes were effective January 1, 1998.<sup>3</sup>
- C. Amendments in 2000.** In November 2000, Congress enacted the Federal Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act) which included provisions that affected the Bankruptcy Court Miscellaneous Fee Schedule. The Act both renumbered the schedule and authorized the judiciary to keep all increases to the charges and new charges effective following the effective date of the Act. The Judicial Conference implemented inflationary increases effective January 1, 2001 for seven of the charges.<sup>4</sup>
- D. Amendments in 2001.** At its March 2001 session, the Judicial Conference approved two new services and related fees, approved two recommendations regarding EPA fees as applied to litigants and infrequent users, and endorsed creating a separate Fee Schedule for Electronic Public Access (EPA Fee Schedule).<sup>5</sup> The first new service and related fee was reducing the fee from 50 cents per page to 10 cents per page for

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<sup>3</sup>See Director's memorandum, November 24, 1997; Bankruptcy Court Administration Division's memorandum, December 16, 1997; Office of Finance and Budget memorandum, December 30, 1997.

<sup>4</sup>The seven charges increased were as follows: Certification fee (Item 2) from \$5 to \$7 and exemplifications (also Item 2) from \$10 to \$14; magnetic tape recordings (Item 3) from \$15 to \$20; records searches (Item 5) from \$15 to \$20; fee for filing or indexing papers (Item 7) from \$20 to \$30; microfilm/microfiche (Item 12) from \$3 to \$4; returned check fee (Item 14) from \$25 to \$35.

<sup>5</sup>See Director's memorandum, April 30, 2001.

printing copies from the public access terminals in the courthouse. The second was a \$20 fee for searches performed by the PACER Service Center. The first EPA fee recommendation the Conference approved was to allow litigants one free electronic copy of all filed documents in an case if receiving that document is required by law or directed by the filer. Second, the Conference approved a policy that no fee is due for accessing information from a judiciary Internet site until an individual account holder accrues charges of more than \$10 in a calendar year. Finally, the Conference approves a separate EPA Fee Schedule because, since fees pertaining to the EPA program cut across court lines, it believed having one EPA Fee Schedule apply to all federal courts would preserve consistency.

## **6. Listing of Fees Due.**

- A. Fees Due upon Filing.**<sup>6</sup> Two separate fees are due upon filing under all chapters of the U.S. Bankruptcy Code and a third fee is due upon filing under chapter 7. All chapters have an initial filing fee and an administrative fee<sup>7</sup> due upon filing. Debtors filing under chapter 7 are responsible for a chapter 7 trustee surcharge in addition to the filing fee and the administrative fee.<sup>8</sup>
- B. Fees for Splitting Cases.**<sup>9</sup> When a debtor requests the court to split a joint case,<sup>10</sup> the clerk must collect a fee equal to one-half the filing fee for the chapter under which the joint case is pending as of the date the court splits the joint case.
- C. Fees for Converting Cases.**<sup>11</sup> When the court converts a case from one chapter to another, the clerk must collect a fee. The amount of the fee depends upon the chapter to which the case is converted.

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<sup>6</sup> Exhibit B-1 is 28 U.S.C. § 1930. Exhibit B-2 is the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>7</sup>The clerk charges an administrative fee in all cases under all chapters (including all ancillary petitions) filed on or after January 1, 1998.

<sup>8</sup>Items 8 and 9 of the Bankruptcy Court Miscellaneous Fee Schedule authorize the administrative fee and the chapter 7 trustee surcharge.

<sup>9</sup>Item 19 of the Bankruptcy Court Miscellaneous fee Schedule.

<sup>10</sup>Filed under § 302 of title 11.

<sup>11</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule and 28 U.S.C. § 1930(a) (for conversions to chapter 11).

- D. Procedure for Interdistrict Transfers.** No fee is due, but the clerk must employ procedures to transfer both funds and files between courts.
- E. Fees for Miscellaneous Contested Proceedings.** The clerk must collect a fee in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for filing any civil action other than a writ of habeas corpus.<sup>12</sup> Currently, this fee (one-half of the civil action filing fee) is **\$75**.
- F. Fees for Filing Adversary Proceedings.**<sup>13</sup> The clerk must collect a fee equal to the fee for filing a civil action in district court.<sup>14</sup> Currently, the fee is **\$150.00**.
- G. Fees for Filing Appeals.**<sup>15</sup> The clerk must collect a notice of appeal fee of **\$5.00** and docketing fee of **\$100.00**.
- H. Fees for Dismissals.** No additional fee is due from the debtor, but the trustee appointed to service the case still is entitled to the usual statutory compensation.
- I. Fees for Reopening Cases.**<sup>16</sup> The clerk must collect a fee equal to the filing fee for the chapter under which the case was pending as of the date the party files the request. The Judicial Conference has provided exceptions to the fee and the court may either waive or defer the reopening fee for good cause.
- J. Miscellaneous Administrative Fees.** These fees include fees for copying, certifications, magnetic tape recordings, amendments to schedules, record searches, indexing papers, microfilm, retrieving documents from offsite storage, return checks, printing local rules, handling the registry of funds, and electronic access.

- (1) Services Provided by Persons or Facilities Outside the Court.** Section 156(c), title 28, United States Code, authorizes the clerk to use persons or

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<sup>12</sup>The Judicial Conference modified this fee effective January 1, 1998. The fee is now one-half of the amount of the civil action filing fee found at 28 U.S.C. § 1914(a), the historical basis for the original fee. The prior fee was \$60.

<sup>13</sup>Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>14</sup>28 U.S.C. § 1914(a) prescribes the filing fee in civil actions.

<sup>15</sup>28 U.S.C. § 1930(c) prescribes fees for filing a notice of appeal. Item 15 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee. Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee for cross-appeals.

<sup>16</sup>Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule and Fed. R. Bankr. P. 4007(b).

facilities outside of the court to provide services the clerk would perform otherwise. Section 156(c) also authorizes each circuit's judicial council to issue guidelines for using outside services.<sup>17</sup>

- (2) **Noticing by Person Other Than the Clerk.** Federal Rules of Bankruptcy Procedure 2002(a), (b), (d), (f), (k), and (o) permit the court to direct a person other than the clerk to send the notices required under the Rules.<sup>18</sup> Moreover, Congress has prohibited the Administrative Office or the courts from restricting the noticing function to the staff of the clerk's office.<sup>19</sup>

**K. Fees in Bankruptcy Act Cases.**<sup>20</sup> Congress codified filing fees for cases under the former Bankruptcy Act of 1898, ("Act"), §§ 40c.(1), 48c., 52a., 77(a), 85(c), 132, 324, 424(2), and 624(2) of the Act.

- 7. **Exceptions to the Fee.** Neither Congress nor the Judicial Conference has authorized exceptions to the fees due upon filing the original request for relief. The Judicial Conference has authorized some exceptions to the fees due for filing adversary proceedings and to the fees due for some of the services listed in the Bankruptcy Court Miscellaneous Fee Schedule. The Conference has exempted bankruptcy administrators from all the fees listed on the Bankruptcy Court Miscellaneous Fee Schedule and has exempted the United States trustee from some of those fees.

**A. Limited Exception for Services Rendered on Behalf of the United States.** Historically, the authority to exempt the United States was found in the Judicial Conference's language in the preamble to the fee schedule. No fees are due for services rendered on behalf of the United States or to bankruptcy administrators.<sup>21</sup> Additionally, the exemption applies to United States trustees except when serving as the case trustee.

- (1) **No Exemption for Electronic Access Services.** Effective October 1, 1993, the Judicial Conference eliminated the exemption for federal agencies from fees for using electronic access services. Nevertheless, those federal agencies that

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<sup>17</sup>Exhibit C-2 is section 156(c) implementation guidelines issued by the Judicial Conference for adoption by the judicial councils of each circuit.

<sup>18</sup>Exhibit C-1 is the Judicial Conference Noticing Guidelines.

<sup>19</sup>Section 403 of Pub.L.No. 101-162, 103 Stat. 1013, Judiciary Appropriations Act of 1990.

<sup>20</sup>Exhibit B-3 is the schedule of filing fees for Bankruptcy Act cases.

<sup>21</sup> Appointed under Pub.L.No. 99-554, § 302(d)(3)(I).

receive funding from judiciary appropriations, such as bankruptcy administrators, still enjoy the exemption.

- (2) **No Exemption for Copy Services where Electronic Access Is Available.** To both mitigate the pressure on clerks' office operations that could result from eliminating the exemption from fees and to encourage federal agencies to use either remote terminals or the public access terminals in clerks' offices to access the files electronically,<sup>22</sup> the Judicial Conference authorized the clerk to collect fees from federal agencies for copying court records and for performing searches where electronic access is available.

**B. Limited Exemptions for Case Trustees.** Although trustees are subject to all fees, such as for photocopying, searches, and certifications, limited exemptions or waivers are available for some of the fees.

- (1) **Motions to Convert.** For the benefit of a trustee, the court may defer or waive the fee for filing a motion to convert the case.
- (2) **Adversary Complaints.** For the benefit of a trustee, the court may defer or waive the fee for filing a complaint.
- (3) **Reopening Fees.** The court may waive the reopening fee under appropriate circumstances or may defer payment of the fee from trustees pending recovery of additional assets.
- (4) **Electronic Access Fee.** In courts where the electronic access fee is applicable, the court may grant an exemption to avoid unreasonable burdens and to promote public access. Nevertheless, the courts grant exceptions cautiously.<sup>23</sup>
- (5) **Reimbursement from the Estate.** With court approval,<sup>24</sup> the estate may reimburse a chapter 7 or chapter 11 trustee for actual and necessary expenses of administration such as photocopying and certification fees. If a chapter 13 debtor has begun making plan payments, the standing trustee will generally have

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<sup>22</sup>See Director's memorandum, July 1, 1993 and the following discussion of copy, search, and electronic access fees. For a more complete discussion of which entities are "the United States" for purposes of an exemption from fees, see the "Adversary Proceedings Initiated by United States."

<sup>23</sup>As noted in Appendix I to Exhibit B-2 (Bankruptcy Court Miscellaneous Fee Schedule). Director's memorandum, July 1, 1993.

<sup>24</sup>11 U.S.C. § 330(a).



funds on hand to pay the fees prescribed by the Bankruptcy Court Miscellaneous Fee Schedule.

8. **Waivers Must Be Authorized.** Bankruptcy fees apply to everyone, including the United States and all trustees, unless specifically exempted. Nevertheless, the court may allow the debtor to pay some of the fees in installments.<sup>25</sup>
9. **Prohibition Against Refunding Filing Fees.** The Judicial Conference prohibits refunds of the fees due upon filing. The Conference prohibits the clerk from refunding these fees even if the party filed the case in error and even if the court dismisses the case or proceeding.<sup>26</sup> Nevertheless, the clerk must refund any fee collected without authority. For example, the clerk has no authority to collect a fee to reopen a case unless the case is closed. Consequently, the clerk must refund a fee to reopen if the parties discover later that the case was open.
10. **Installment Payments.**<sup>27</sup> Either an individual filing a voluntary individual case or a husband and wife filing a voluntary joint case may pay the filing fees in installments.<sup>28</sup> The “filing fees” in this context include any fee payable to the clerk at the time the debtor files the petition<sup>29</sup> and include the traditional filing fee, the miscellaneous administrative fee, and, in chapter 7 cases, the chapter 7 trustee surcharge. Nevertheless, no installments are permitted in involuntary cases.
11. ***In Forma Pauperis.*** Section 1930(a) of title 28, United States Code, prohibits filing bankruptcy petitions *in forma pauperis*. The circuits disagree whether 28 U.S.C. § 1915(a) authorizes *in forma pauperis* adversary proceedings and appeals.
12. **Procedure When the Fee Fails to Accompany the Filing.** The clerk has authority to accept petitions and to designate them as “received,” “accepted,” or “lodged for filing,” but the clerk has no authority to designate them as “filed.”
13. **Accounting**

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<sup>25</sup>See following discussion at Part A, ¶ 9 and Part B, ¶ 3.

<sup>26</sup>JCUS-SEP 49, p. 202; JCUS-SEP 48, p. 30-31.

<sup>27</sup>See discussion at Part B, ¶ 3.

<sup>28</sup>28 U.S.C. § 1930(a). The Bankruptcy Court Miscellaneous Fee Schedule also permits fees due upon filing to be paid in installments.

<sup>29</sup>Either under § 1930(a) or under the Bankruptcy Court Miscellaneous Fee Schedule. Fed. R. Bankr. P. 1006(a).

**A. United States Trustee System Fund.** Section 589a of title 28, United States Code, establishes a special fund in the United States Treasury known as the United States Trustee System Fund. This fund finances the United States trustee system. Except for chapter 9 bankruptcies and § 304 cases, the clerk credits this fund with a portion of the filing fee from cases filed in those judicial districts supported by the United States Trustee System.

(1) **Quarterly Fees in Chapter 11 Cases.** The United States Trustee credits this fund with both quarterly fees paid by chapter 11 debtors<sup>30</sup> and all excess compensation received by chapter 12 and chapter 13 standing trustees. Chapter 11 trustees and debtors in possession deposit the fees directly to the United States Trustee System Fund. The clerk plays no role in collecting these fees.

(2) **Bankruptcy Administrator States.** Since the judicial districts in Alabama and North Carolina are exempt from the United States Trustee System, the clerk credits the filing fees that would have gone to the United States Trustee System Fund<sup>31</sup> instead to the general receipts of the Treasury.<sup>32</sup> The clerk also credits the general receipts' fund for fees otherwise due to a United States trustee for serving as a trustee in a case.<sup>33</sup>

(3) **Accounting Treatment.**<sup>34</sup> The clerk must treat these fees as offsetting collections to the appropriation "United States Trustees System Fund."<sup>35</sup> (**Credit fund 5073XX**).

**B. Special Fund for the Judiciary.** Section 1931 of title 28, United States Code, establishes a special fund in the Treasury to offset funds appropriated for the operation

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<sup>30</sup>28 U.S.C. § 1930(a)(6).

<sup>31</sup>Under 28 U.S.C. § 589a.

<sup>32</sup>Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

<sup>33</sup>Under 11 U.S.C. § 330(d).

<sup>34</sup>The Department of Justice Appropriations Act, title I of Pub. L. No. 104-208, contained a general provision that changed the classification of fees creditable to the United States Trustee System Fund prescribed originally under 28 U.S.C. § 589a(a) and (b).

<sup>35</sup>Office of Finance and Budget Memorandum, November 22, 1996.

and maintenance of the United States courts.<sup>36</sup> The Appropriations Act of 1994<sup>37</sup> requires the clerk to credit this special fund with a portion of the filing fee.

### **Part B: Fees for Initial Filings**

#### **1. Fees Due.<sup>38</sup>**

##### **A. Summary of Fees Due upon Filing.**

**Table B-1. Filing Fees by Chapter**

Chapter	Filing Fee	Administrative Fee	Chapter 7 Surcharge	Total Fee Due Upon Filing
Chapter 7	\$155	\$30	\$15	<b>\$200</b>
Chapter 13	\$155	\$30	-0-	<b>\$185</b>
Chapter 9	\$800	\$30	-0-	<b>\$830</b>
Chapter 11 (non railroad) <sup>39</sup>	\$800	\$30	-0-	<b>\$830</b>
Chapter 11 (railroad)	\$1,000	\$30	-0-	<b>\$1,030</b>
Chapter 12	\$200	\$30	-0-	<b>\$230</b>

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<sup>36</sup>Section 406(b) of Pub.L.No. 101-162, the Judiciary Appropriations Act of 1990, as amended by section 111, Pub.L.No. 103-121.

<sup>37</sup>Pub.L.No. 103-121, § 111, (October 27, 1993); Pub.L.No. 101-162, § 406(b), (November 21, 1989).

<sup>38</sup>Exhibit B-4 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters and catalogues the allocation of those fees among the Treasury funds.

<sup>39</sup>As defined by 11 U.S.C. § 101.

- B. Filing Fees.** Under 28 U.S.C. § 1930(a), the clerk<sup>40</sup> must collect the filing fees<sup>41</sup> identified in the first column of the preceding chart.
- C. Miscellaneous Administrative Fee.**<sup>42</sup> In all cases filed under Title 11 and in all cases filed as a case ancillary to a foreign proceeding,<sup>43</sup> the clerk must collect from the petitioner<sup>44</sup> a miscellaneous administrative fee of **\$30**. Although this fee is not a filing fee, the petitioner must pay it when he or she files the petition.
- (1) **Due Only with New Cases.** Since reopening, consolidating, converting to another chapter, and splitting joint cases involve existing cases, no administrative fee is due.
- (2) **Trustees May Move for Reimbursement.** Even though the petitioner paid the administrative fee paid upon filing, a case trustee, a contractor acting on the trustee's behalf, or other person directed by the court to provide notices under Federal Rule of Bankruptcy Procedure 2002(a) may seek from the estate reimbursement for the costs of noticing.<sup>45</sup>

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<sup>40</sup>Defined in Fed. R. Bankr. P. 9001(3) as the bankruptcy clerk, if one has been appointed, otherwise, clerk of the district court.

<sup>41</sup>Exhibit B-4 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters and catalogues the allocation of those fees among the Treasury funds.

<sup>42</sup>Pursuant to Item 8 of the Bankruptcy Court Miscellaneous Fee Schedule. In December 1992, the Judicial Conference approved the collection of a miscellaneous administrative fee of \$30 in all chapter 7 and chapter 13 cases in lieu of charging noticing fees. Effective January 1, 1998, the Conference expanded this fee to all cases filed under Title 11.

<sup>43</sup>In September 1992, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to substituting in chapter 7 and 13 cases a \$30 administrative fee due upon filing for the notice fees. (Director's memorandum, November 4, 1992.) Effective January 1, 1998, the Judicial Conference eliminated the 50 cents per notice fee altogether by expanding the \$30 miscellaneous administrative fee to all chapters of title 11 and to filings under 11 U.S.C. § 304, which permits the filing of cases ancillary to a foreign proceeding. Therefore, the clerk will no longer charge the 50 cents per notice fee will after January 1, 1998 in either pending or future cases. Nevertheless, if the notice fee was incurred prior to January 1, 1998, the clerk must collect it even if the collection takes place after January 1, 1998.

<sup>44</sup>Initially, the schedule specified that the clerk would collect the fee from the debtor. The schedule has been modified to include the word petitioner; therefore, the clerk must now collect the \$30 administrative fee from creditors filing an involuntary case against the debtor.

<sup>45</sup>Bankruptcy Judges Division letter, November 20, 1992.

- D. Chapter 7 Trustee Surcharge.**<sup>46</sup> In chapter 7 cases, the clerk must collect<sup>47</sup> an additional **\$15** fee from the petitioner to pay the chapter 7 trustee.<sup>48</sup> The petitioner must pay the **\$15** fee in addition to the filing fee prescribed under 28 U.S.C. § 1930 (currently **\$155**) and the administrative fee (**\$30**) for a total of **\$200** in fees due upon filing.
- (1) **Accounting.** To satisfy 11 U.S.C. § 330, the clerk must hold the fee in the deposit fund (**6855TT**) until paid to the trustee.<sup>49</sup>
- (2) **Due for All Cases Closed.** The **\$15** is payable to trustees in all chapter 7 cases closed on or after October 22, 1995, regardless of when those cases were filed.<sup>50</sup>
- E. Petition Ancillary to Foreign Proceedings.** For a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, the clerk must collect **\$800**.<sup>51</sup> Additionally, the clerk must collect the \$30 administrative fee.<sup>52</sup>
- F. Fees in Involuntary Cases.** Filing fees<sup>53</sup> are the same for both voluntary and involuntary petitions. The clerk must collect the administrative fee (in all chapters and ancillary petitions) and the chapter 7 trustee surcharge (in chapter 7) from the petitioner in an involuntary case.<sup>54</sup>

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<sup>46</sup>At its March 1995 session, the Judicial Conference approved a **\$15** trustee surcharge as part of the Bankruptcy Court Miscellaneous Fee Schedule. The surcharge funds the increase in compensation of chapter 7 trustees by **\$15** (from **\$45** to **\$60** per case). The Bankruptcy Reform Act of 1994, Pub.L.No. 103-394, section 117 mandated the increase. The fee, effective on October 22, 1995, applies in any chapter 7 case filed on or after that date.

<sup>47</sup>Pursuant to Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule, for cases filed on or after October 22, 1995.

<sup>48</sup>Serving in cases as provided in 11 U.S.C. § 330(b)(2).

<sup>49</sup>Director's memorandum, July 19, 1995.

<sup>50</sup>Director's memorandum, September 13, 1995.

<sup>51</sup>Pursuant to Item 17 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>52</sup>See ¶C above.

<sup>53</sup>28 U.S.C. § 1930(a).

<sup>54</sup>See Bankruptcy Court Miscellaneous Fee Schedule, Items 8, 8.1.

- (1) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.
- G. **Joint Petitions.** The clerk must collect only one filing fee when debtors file a joint petition.
  - (1) **Eligibility.**<sup>55</sup> Only an individual and that individual's spouse may file a joint petition.
  - (2) **Two Filing Fees for Serial Filings by Husbands and Wives.** When an individual debtor first files a petition and then that debtor's spouse files a second petition, the debtors may not amend or convert the original filing retroactively to a joint filing.
    - (a) The second filing spouse must pay a second filing fee. Filing the first case created an order for relief as of the date of filing. To permit a second petitioning spouse to join the original petition later could impermissibly compromise the rights of parties in interest in the second spouse's case.
    - (b) Nevertheless, the court may order the trustee or debtor in possession to jointly administer the two separately docketed cases
2. **Waiving or Refunding Fee Prohibited.** The Judicial Conference prohibits refunds of fees due upon filing. The Conference prohibits the clerk from refunding these fees even if the party filed the case in error and even if the court dismisses the case.
3. **Payments in Installments.** Eligible debtors may move<sup>56</sup> for leave to pay the fees due upon filing in installments. Nevertheless, petitioners in involuntary cases are ineligible for installment payments.
  - A. **Eligibility and Maximum Number of Payments.** Only voluntary individual debtors are eligible to pay the filing fee, the administrative fee, and the chapter 7 trustee surcharge (in a chapter 7 case) in installments.<sup>57</sup>
    - (1) **Number of Installments Permitted.** The debtors must pay the fees due upon filing in four or fewer installments and must pay the final installment within 120

days of filing unless the court, for cause, extends that time. Even if the court extends that time, the debtors must pay the fees due upon filing in full within 180 days of the date they file the petition.<sup>58</sup>

- (2) **Lump Sum Payments.** Debtors may make a "deferred payment" in one installment prior to the discharge provided their proposed payment date falls within the time allowed by Federal Rule of Bankruptcy Procedure 1006(b)(2).<sup>59</sup> The debtors must indicate the date they will make payment in their application.
- (3) **Application of the Installment Payments.** The clerk must allocate the payments between the filing fee and the chapter 7 trustee surcharge *pro rata*.<sup>60</sup>
- (4) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.

**B. Procedure.** The debtors must file a motion.

- (1) **Requirements of the Motion.** The debtors' motion must state the following:
  - (a) That the debtors are unable to pay the fee except in installments;
  - (b) The proposed terms of the installment payments; and
  - (c) That the debtors have paid no attorney for services related to the case.<sup>61</sup>
- (2) **Debtors' Applications Should Conform to Official Form 3.** The application must conform substantially to Official Form 3, which also contains a proposed order for approving the application.<sup>62</sup>

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<sup>58</sup>Fed. R. Bankr. P. 1006(a), (b)(2).

<sup>59</sup>General Counsel memorandum, July 24, 1987.

<sup>60</sup>Before the Federal Courts improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act), the clerk applied the first \$30 he or she received under an installment payment plan to the \$30 miscellaneous administrative fee. Once the payments satisfy the administrative fee, the clerk allocated the remaining payments between the filing fee and the chapter 7 trustee surcharge *pro rata*. The clerk prioritized the \$30 miscellaneous administrative fee because these revenues were treated as a reimbursement to the Judiciary's appropriation. The Act changed this treatment.

<sup>61</sup>Fed. R. Bankr. P. 1006(b)(1).

<sup>62</sup>Exhibit B-5 is a copy of Form 3, Application and Order to Pay Filing Fee in Installments.

- (3) **Both Spouses Must Sign the Application.** In a joint case, both spouses must sign the application.
  - (4) **The Court Must Act Before the Meeting of Creditors.** The court must act on the application before the § 341 meeting of creditors.<sup>63</sup>
- C. **Chapter 13 Cases.** The chapter 13 trustee may pay the filing fees from moneys remitted to the trustee by the debtor under a proposed plan. The chapter 13 trustee may pay the fees due upon filing from this money provided, first, the court authorized installment payments and, second, the court receives full payment within the time provided by Rule 1006(b)(2).<sup>64</sup> The debtor must pay the filing fees in full before either the debtor or the chapter 13 trustee may pay an attorney or anyone else rendering services to the debtor.<sup>65</sup> Additionally, the debtor must make provisions to pay in full those fees and all installments required either by statute or by the plan before the court may confirm a plan in either chapter 12 or chapter 13 cases.<sup>66</sup>
- D. **Penalty for Non-Payment.** Permission to pay the fees due upon filing in installments fails to abate the debtor's obligation to pay the fees in full. The court may grant no discharge in a chapter 7 case if the debtor has failed to pay either the filing fee or any other fees due upon filing the case.<sup>67</sup> Fees payable upon filing include the filing fee, the administrative fee, and the chapter 7 trustee surcharge.
  - (1) **Dismissals.** If the court dismisses a case before the due date of the last installment payment, the debtor still must pay the fees due upon filing in full. If the court dismisses a case before the debtor pays all fees due upon filing, the court may include a statement that fees are owing in its order of dismissal. The order also may include a statement that the court will decline to entertain a motion to reconsider the dismissal unless the debtor pays the balance of all fees due when the motion is made. The order allowing payment of the fees in installments and a statement from the clerk of court addressing the status of payments would support the court's finding that fees are due.
  - (2) **Refiling Prohibited for 180 days.** No individual or family farmer may be a debtor under any chapter within 180 days after dismissal if the court dismissed

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<sup>63</sup>Fed. R. Bankr. P. 1006(b)(2).

<sup>64</sup>General Counsel memorandum, May 7, 1985.

<sup>65</sup>Fed. R. Bankr. P. 1006(b)(3).

<sup>66</sup>11 U.S.C. §§ 1225(a)(2), 1325(a)(2).

<sup>67</sup>Fed. R. Bankr. P. 4004(c)(1)(f).



the case due to the debtor's willful failure either to comply with the court's orders or to appear before the court in proper prosecution of the case.<sup>68</sup> An order to pay the filing fee in installments may be such a court order and, if the debtor has missed an installment, the debtor may be in violation of that order. Consequently, if a debtor with unpaid fees files another case within 180 days, the clerk of court may bring the debtor's default before the court for a hearing to show cause why the new case should not be dismissed.

- (3) **Refiling After 180 Days.** If a debtor with unpaid fees files a new case after 180 days pass, the bankruptcy clerk should bring the unpaid fees to the attention of the court and the court may consider the debtor's default in deciding whether to allow the debtor again to pay the filing fee in installments.
- (4) **The Court's Claim in a Subsequent Bankruptcy.** Once the debtor with unpaid fees files a new petition, the clerk must stop all action to collect the unpaid fees. The court is merely an unsecured creditor in the new case. Nevertheless, the clerk may have no authority to file a proof of claim in the new case. Only the Department of Justice has authority to represent the United States in litigation<sup>69</sup> and whether filing a proof of claim rises to litigation or remains a ministerial collection action is open to interpretation. Clerks should confer with their district's United States Attorney and they should coordinate their efforts to assert the court's claim with that office.
- (5) **Federal Claims Collections.** The clerk must establish procedures to collect unpaid fees. The Office of General Counsel and the Accounting and Financial Systems Division advises that the Federal Claims Collection Act, as amended by the Dept Collection Improvement Act of 1996,<sup>70</sup> provides direction for establishing these procedures.
- (6) **Clerk's Duty of Due Diligence.** An agency must make a "diligent effort" to collect a debt before the debt may be written off, compromised, or referred to

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<sup>68</sup>Section 109(g)(1).

<sup>69</sup>28 U.S.C. § 516 restricts conducting litigation to the Department of Justice.

<sup>70</sup>Before the GAO Act of 1996, the GAO and the Department of Justice shared responsibility for setting debt collection standards for federal agencies. In 1996, that Act relieved the GAO of its responsibility to issue these standards. The Debt Collection Improvement Act then designated the Department of the Treasury to share this responsibility with the Department of Justice. In December 2000 the GAO removed the Federal Claims Collections Standards that were published at 4 C.F.R. Parts 101-105, and the Department of the Treasury and the Department of Justice issued new standards at 31 C.F.R. 900-904. Debt collection procedures addressing the disbursing officer's offset authority under DCIA can be found at 31 C.F.R. 285.

the Department of Justice for litigation. The "diligence" required depends on such factors as the amount of the debt, the likelihood of collection, and cost of the collection efforts.<sup>71</sup>

- (7) **Notation in Order of Dismissal.** The court may include a statement that the fees are due in the order of dismissal. That statement would be a first attempt to collect the fees. Depending on the amount of the fees, the clerk must decide whether to follow up in 30 days with a letter to the debtor. If the debtor fails to file a new case within 180 days and fails to respond to either the order of dismissal or the follow up letter, if one is sent, the clerk reasonably may write off the debt. The clerk must refer debts outstanding beyond 180 days to the Treasury Department for collection under the Treasury Offset program.
4. ***In Forma Pauperis* Petitions.** Section 1930(a) of title 28, United States Code, prohibits filing bankruptcy petitions *in forma pauperis*. This provision codifies the decision of the Supreme Court in *In re Kras*, 409 U.S. 434 (1973).<sup>72</sup>
5. **Procedure When Petition Not Accompanied by Fee.** The prescribed fees must accompany the petition unless the debtor files an application to pay the fees in installments.<sup>73</sup> If the debtor submits a petition with neither the fees nor an application to pay the fees in installments, the clerk may accept the papers but designate them as "received," "accepted," or "lodged for filing." The clerk avoids violating his or her duty collect a fee upon the "filing" of the petition by declining to designate the petition as "filed" until either the debtor pays the fees or the court enters an order allowing installment payments. Although the clerk declines to process the petition is until the debtor resolves the fee deficiency, the clerk does create a record of the date the court received the petition. The parties may contest the significance of the court receiving the petition on that date, but the clerk altered none of the debtor's rights either by failing to accept the document or by failing to note the date on which it was brought to the clerk's office.
6. **Accounting.**

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<sup>71</sup>General Counsel memorandum, July 11, 1991.

<sup>72</sup>In October 1993, Congress enacted legislation directing the Judicial Conference to conduct a three-year study on the effect of waiving filing fees in chapter 7 bankruptcy cases for individual debtors who are unable to pay the filing fee in installments. The legislation required that a fee waiver program be implemented and studied in "not more than six districts," for a period of three years beginning October 1, 1994. The program operated in the bankruptcy courts of Illinois-Southern, Montana, New York-Eastern, Pennsylvania-Eastern, Tennessee-Western, and Utah. The program sunset on September 30, 1997.

<sup>73</sup>Fed. R. Bankr. P. 1006(a).

**A. Generally.**

- (1) **Funds Credited to United States Trustee System Fund.** The clerk must deposit a portion of the filing fee generated by cases filed under chapter 7, 11, 12, or 13, in a judicial district covered by the United States trustee system, to the United States Trustee System Fund<sup>74</sup> (**Credit fund 5073XX**) as follows:

**Table B-2. Filing Fees Credited to the U.S. Trustee System**

Filing Fee	Portion to Fund	Amount
Chapters 7 and 13	27.42 percent	\$ 42.50
Chapter 11 (non railroad)	50.0 percent	\$400.00
Chapter 11 (railroad)	50.0 percent	\$500.00
Chapter 12	50.0 percent	\$100.00
Chapter 9	-0-	-0-

- (2) **Bankruptcy Administrator Districts.** In the judicial districts in Alabama and North Carolina, the clerk must deposit the United States trustee's portion of the fee to the general receipts of the Treasury.<sup>75</sup> (**Credit fund 086900**).
- (3) **Funds Credited to the Special Fund for the Judiciary.** The clerk must deposit a portion of the filing fee from chapters 7, 13 and 11 cases to the special fund for the judiciary.<sup>76</sup> This fund offsets the judiciary's appropriations for operating the federal courts. (**Credit fund 510000**). The amount of the credit is as follows:

**Table B-3. Filing Fees Credited to the Judiciary**<sup>77</sup>

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<sup>74</sup>28 U.S.C. § 589a(b)(1)-(4).

<sup>75</sup>Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

<sup>76</sup>Established under 28 U.S.C. § 1931.

<sup>77</sup>See note to 28 U.S.C. § 1931.

Filing Fee	Portion to Fund	Amount
Chapters 7 and 13	33.87 percent	\$ 52.50
Chapter 11	25.0 percent	\$200.00
Chapter 11 (Railroad), Chapter 12, and Chapter 9	-0-	-0-

- (4) **Cases in Which the Judiciary Receives No Portion of the Fee.** The judiciary receives no portion of the filing fee from chapter 11 railroad cases, chapter 12 family farmer cases, or chapter 9 municipal debt cases.

**B. Chapter 7 Cases.**

- (1) **Filing Fee - \$155.00 (28 U.S.C. § 1930(a)).**

Deposit Fund	\$45.00	11 U.S.C. § 330(b)(1)	6855TT
General Fund	15.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	52.50	28 U.S.C. § 1930 (Note)	510000
Special Fund for the U.S. Trustee	42.50	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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- (3) **Trustee Surcharge - \$15.00.**

Deposit Fund	\$15.00	11 U.S.C. § 330(b)(2)	6855TT
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- (a) **Cases Filed on or After October 22, 1995.** For cases filed on or after October 22, 1995, the clerk must deposit the chapter 7 trustee surcharge to **fund 6855TT**.

**C. Chapter 9 Municipal Debt.**

- (1) **Filing Fee - \$800.00 (28 U.S.C. § 1930(a)(2)).**

General Fund	\$300.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$500.00	28 U.S.C. § 1930(a)(3)	510000

- (2) **Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**D. Chapter 11 (Non-Railroad).**

- (1) **Filing Fee (Non-Railroad) - \$800.00 (28 U.S.C. § 1930(a)(3)).**

General Fund	\$200.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	200.00	28 U.S.C. § 1930(a)(3)	510000
Special Fund for the U.S. Trustee	400.00	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**E. Chapter 11 (Railroad).**

**(1) Filing Fee (Railroad) - \$1,000.**

General Fund	\$500.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	500.00	28 U.S.C. § 589a.	5073XX

**(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**F. Chapter 12 (Family Farmer).**

**(1) Filing Fee - \$200.00 (28 U.S.C. § 1930(a)(5)).**

General Fund	\$100.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	100.00	28 U.S.C. § 589a.	5073XX

**(2) Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**G. Chapter 13 (Wage Earner).**

**(1) Filing Fee - \$155.00 (28 U.S.C. § 1930(a)(1)).**

General Fund	\$ 60.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	52.50	PL 101-162, PL 103- 121	510000

Special Fund for the U.S. Trustee	42.50	28 U.S.C. § 589a.	5073XX
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(2) **Administrative Fee - \$30 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$30.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**H. General Questions Regarding Payments to Chapter 7 Trustees.**

- (1) **General Rule.** Chapter 7 trustees will receive \$60 when the trustee completes his or her services.<sup>78</sup> In chapter 7 cases, the clerk must credit \$45 of the filing fee and the \$15 chapter 7 trustee surcharge to the trustee deposit fund and hold these funds to pay the chapter 7 trustee.<sup>79</sup>
- (2) **Cases Filed Before October 22, 1995.** The trustee in these cases will receive \$45 (or the lesser amount received from the petitioner from the filing fee) from the trustee deposit fund **6855TT** and \$15 from the **6855UF** fund. The debtors paid no surcharge prescribed under Item 9 in these cases and fund **6855UF** tracks the deficiency.
- (3) **Cases Filed on and After October 22, 1995.** The trustee in these cases will receive \$45 (or the lesser amount actually received from the petitioner) from the filing fee and \$15 from the chapter 7 trustee surcharge.<sup>80</sup> The clerk will charge fund **6855TT**.
  - (a) **Postings to Specific Case Ledger.** The clerk must post both the \$15 from the surcharge and the \$45 from the filing fee to the specific case's trustee ledger records and then must pay the trustee according to the court's practice (when no asset report filed, case closed, etc.). Connecting the collection of the chapter 7 trustee surcharge and the filing fee to a specific case, however, fails to reserve those funds for that specific case. Connecting those collections to a specific case is merely an accounting control to track collections and expenditures.

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<sup>78</sup>11 U.S.C. § 330(b).

<sup>79</sup>11 U.S.C. § 330(b)(1).

<sup>80</sup>Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule.

- (b) **Reporting.** The clerk reports receipts to and disbursements from fund **6855TT** on **AO 274**. The clerk reflects receipts and disbursements of both the \$45 from the filing fee and the \$15 from the chapter 7 trustee surcharge in the balances reported on quarterly **AO 183** reports.
- (4) **In Converted Chapter 7 Cases.** The clerk will pay the trustee's \$60 fee by transferring \$45 from the general fund **account 086900** (credited with the filing fee under the original chapter) to **fund 6855TT**. Additionally, the clerk will transfer \$15 generated by the fee collected with the motion to convert or with the notice of conversion<sup>81</sup> from **fund 6855BK** to **6855TT**. These two transfers provide the full \$60 for payment to the trustee.
  - (a) The Judicial Conference left the previous instructions for payment of the \$45 trustee fee unchanged with the implementation of the \$15 chapter 7 trustee surcharge.<sup>82</sup>
  - (b) **Funds 6855UF (Unfunded Disbursements) and 6855BK (Receipts)** were created to track disbursements and receipts of fees generated by the \$15 trustee surcharge<sup>83</sup> credited to **fund 6855TT** and by the \$15 fee for a motion to convert or for a notice of conversion to chapter 7<sup>84</sup> credited to fund **6855BK**.<sup>85</sup>
- (5) **If No Trustee is Appointed.** In cases in which no trustee is appointed, the clerk must transfer the \$45 fee from **fund 6855TT** to **fund 086900**, but the clerk must transfer the \$15 chapter 7 trustee surcharge from **fund 6855TT** to **fund 6855BK**.
- (6) **If Multiple Trustees Serve.** When more than one trustee serves in a chapter 7 case, the court may apportion the \$45 among all the trustees that served<sup>86</sup> but each is entitled to the full \$15 surcharge. Multiple trustees may serve for many reasons, for example: creditors may elect a trustee replacing the interim trustee, the original trustee may become unable to serve and resign, the court may

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<sup>81</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>82</sup>See Guide to Judiciary Policies and Procedures, Vol. 1, Ch. 7, pp. 33 and 391.

<sup>83</sup>9 of the Bankruptcy Court Miscellaneous Fee Schedule .

<sup>84</sup>10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>85</sup>Director's memorandum, October 11, 1995.

<sup>86</sup>See 11 U.S.C. §§ 326(c) and 703(c).



convert and reconvert the case, or the parties may transfer the case. (**Credit fund 6855TT**).

- (7) **Split Cases.** When a joint chapter 7 case splits, the clerk must pay the second trustee by transferring \$45 from **fund 086900** to **fund 6855TT** and by transferring the additional \$15 from **fund 6855BK** to **fund 6855TT**. The clerk will post the \$60 (for each trustee) both to the individual trustee ledger and to the Treasury control account for **fund 6855TT** and will reflect the transfer on the quarterly **AO 183**.

Trustees in joint cases filed originally under any chapter other than chapter 7 are funded like trustees in split chapter 7 cases. The clerk will transfer \$45 from **fund 086900** to **fund 6855TT** and will transfer the additional \$15 from **fund 6855BK** to **fund 6855TT**. The clerk will post the \$60 (for each trustee) both to the individual trustee ledgers and to the Treasury control account for **fund 6855TT** and will reflect the transfer on the quarterly **AO 183**.

- (8) ***Sua Sponte Conversions.*** If the court converts a chapter 12 or chapter 13 case *sua sponte* (on its own motion), the clerk will collect no \$15 chapter 7 trustee surcharge. The clerk will pay the trustee the \$15 chapter 7 trustee surcharge from monies the clerk collected with motions and notices to convert to chapter 7.<sup>87</sup> The clerk will transfer \$15 from **fund 6855BK** to **fund 6855TT**. The clerk also will transfer \$45 from **fund 086900** to **6855TT**.
- (9) **United States Trustee Serving as the Chapter 7 Trustee.** When the United States trustee serves as a trustee in a case, the clerk deposits the compensation due for the United States trustee's services as trustee to the United States Trustee System Fund. (**Credit fund 5073XX.**)
  - (a) **For Cases Filed Before October 22, 1995.** The clerk will transfer \$15 from **fund 6855UF** to **fund 5073XX**, the United States Trustee System Fund, after the case is closed.
  - (b) **For Case Filed on or After October 22, 1995.** The clerk will transfer \$15 from **6855TT** to **5073XX**, the United States Trustee System Fund, after the case is closed.<sup>88</sup>

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<sup>87</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>88</sup>11 U.S.C. § 330(d).

- (c) **Accounting Procedure.** If the United States trustee is due both the \$15 trustee surcharge<sup>89</sup> and the \$45 trustee fee generated by the chapter 7 filing fee,<sup>90</sup> the clerk must use form **AO 183** to transfer the fees from the trustee deposit fund (**fund 6855TT**) to the United States Trustee System Fund (**fund 5073XX**).<sup>91</sup> The clerk prepares no **TR4** trustee payment voucher.
- (10) **Reopened Cases.** If a trustee is appointed in a case the court has reopened, the clerk pays the trustee the \$15 surcharge from the funds the clerk collected with motions and notices to convert to chapter 7.<sup>92</sup> Transfer \$15 from fund **6855BK** to fund **6855TT**.
- (11) **Installment Payment Defaults.** In a chapter 7 case filed after October 22, 1995 in which the debtor defaults before completing the installments, the case trustee will receive the prorated portion of the filing fee and the chapter 7 trustee surcharge the clerk credited to the **6855TT** account. Additionally, the trustee will receive funds from **6855BK** needed to pay the \$15 fee in full as required by 11 U.S.C. § 330(b)(2).<sup>93</sup>

#### **I. General Questions Regarding Collection of the Chapter 7 Trustee Surcharge.**

- (1) **Joint Cases.** Only one \$15 chapter 7 surcharge is due with joint cases filed on or after October 22, 1995.
- (2) **Splits.** No additional \$15 trustee surcharge is due when a chapter 7 joint case splits.
- (3) **Involuntary Cases.** The \$15 trustee surcharge is due from the petitioners in an involuntary case.
- (4) **Reopened Cases.** No \$15 chapter 7 trustee surcharge is due when a case is reopened.<sup>94</sup>

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<sup>89</sup>11 U.S.C. § 330(b)(2).

<sup>90</sup>11 U.S.C. § 330(b)(1).

<sup>91</sup>See 11 U.S.C. § 330(d).

<sup>92</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>93</sup>Exhibit B-6 is an example.

<sup>94</sup>Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule. With some exceptions, the only fee due when a petitioner files a motion to reopen is a new “filing fee” prescribed by 28 U.S.C. § 1930(a) for filing a new case in effect on the date the petitioner files the motion to

### **Part C. Fee upon Splitting Cases**<sup>95</sup>

1. **The Fee Due.** When a debtor moves the court to split a joint case,<sup>96</sup> the clerk must charge a fee equal to one-half the current filing fee for the chapter under which the joint case is pending. The fee is due when the court grants the motion.
  - A. **Amount of the Fee.**
    - (1) **Chapter 7 and 13 Cases.** The current fee is **\$77.50**. This is one half of the current filing fee of \$155.
    - (2) **Chapter 12 Cases.** The current fee is **\$100.00**. This is one half of the current filing fee of \$200.
    - (3) **Chapter 11 Cases.** The current fee is **\$400.00**. This is one half of the current filing fee of \$800.
  - B. **Consolidated Cases.** Consolidating two or more estates into a joint case requires judicial action.<sup>97</sup> The majority of joint cases are jointly administered, rather than actually consolidated. Nevertheless, the fee for splitting a joint case is due whether the estates were substantively consolidated or jointly administered.
2. **Exceptions to the Fee.** No fee is due if the court splits a case either *sua sponte* or at the request of a party other than one of the joint debtors. Additionally, no fee is due if the court dismisses one of the joint debtors.
3. **Accounting. (Credit fund 510000.)**

#### **Table D-1. Fees Due upon Splitting Cases**

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reopen.

<sup>95</sup>The Bankruptcy Court Miscellaneous Fee Schedule originally referred to the fee for splitting a joint case filed under section 302(a) of the Code as a "deconsolidation" fee. To ease confusion concerning application of the fee, on February 14-15, 1990 the Executive Committee of the Judicial Conference changed the denomination of the fee. Director's memorandum, February 26, 1990.

<sup>96</sup>Filed under 11 U.S.C. § 302.

<sup>97</sup>11 U.S.C. § 302(b).

Chapter	Fee	Account
Chapters 7 and 13	\$ 77.50	510000
Chapter 12	100.00	510000
Chapter 11	400.00	510000

#### **Part D. Fees for Converting Cases**

##### **1. Fees Due.**

- A. Conversions to Chapter 11.** When the court converts a chapter 7 case to one under chapter 11 at the debtor's request, the clerk must collect a conversion fee of **\$645**.<sup>98</sup> The fee is due after the court grants the debtor's motion. The clerk credits three-fourths (**\$483.75**) of the **\$645** fee to the United States Trustee System Fund, (**fund 5073XX**), and one fourth (**\$161.25**) to the general fund of the Treasury, (**fund 086900**).<sup>99</sup>
- B. Conversions to Chapter 7.**<sup>100</sup> The clerk must collect **\$15** upon receiving either a motion to convert a case to chapter 7 or a notice of conversion.<sup>101</sup> The clerk will use the fee to pay the case trustees.<sup>102</sup> If the trustee serving in the case before the conversion is the movant, the conversion fee is payable only from the estate that existed before conversion. (**Credit fund 6855BK.**)

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<sup>98</sup>28 U.S.C. § 1930(a) requires a fee equal to the difference between the filing fee in chapters 7 and 13 and the filing fee in chapter 11. Currently, the filing fee in chapters 7 and 13 is \$155. The filing fee in chapter 11 is \$800.

<sup>99</sup>28 U.S.C. § 589a(b)(6).

<sup>100</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule requires that a movant pay a **\$15** fee to file a motion to convert a case under chapter 11 to one under chapter 7. In addition, Item 10 requires a chapter 12 or chapter 13 debtor pay a **\$15** fee to file a notice of conversion to chapter 7.

<sup>101</sup>Under 11 U.S.C. § 1208(a) or § 1307(a).

<sup>102</sup>Under 11 U.S.C. § 330(b)(2).

- (1) **Fee Due upon Filing.** The \$15 fee<sup>103</sup> is due when a party files either a motion to convert or a notice of conversion to chapter 7. This fee is due in addition to the fee for splitting a case.<sup>104</sup>
- (2) **No Refund upon Denial of the Motion.** If the court denies a motion to convert to chapter 7, the Judicial Conference prohibits the clerk from refunding the \$15 fee collected when the motion was filed. The Judicial Conference prohibits the clerk from refunding these fees even if the party filed the case in error, the court dismisses the case, or if no trustee is appointed. The fee is earned when the motion is filed.
- (3) **Fee Collected when the Motion to Convert Is Combined with Other Motions.** When a party combines a motion to convert with any other motion (*e.g.*, motion to dismiss) the clerk must collect the \$15 fee. Additionally, if more than one party file motions to convert a case to chapter 7, the clerk must collect the \$15 fee from each filing party. Yet, if several parties join in a single motion to convert, the clerk will only collect one \$15 fee.
- (4) **Clerk May Not Reject the Debtor's Motion to Convert for Non-payment of the Fee.** A debtor's right to convert is independent of his or her duty to pay the \$15 fee. The clerk's office must accept a notice of conversion with or without the fee. Nevertheless, the debtor's failure to pay the fee may be grounds for dismissing the case. The court may issue an order to show cause why the case should not be dismissed for failure to pay the \$15 fee.
- (5) **No Fee Due upon *Sua Sponte* Conversions.** If the court converts a chapter 12 or chapter 13 case *sua sponte*, no \$15 fee is due.
- (6) **Exemption for Case Trustee.** When a trustee serving in a case moves to convert, he or she must either pay the conversion fee or certify in writing that assets in the estate has no assets. If the estate has less than \$15, the estate must submit whatever it has up to \$15.
- (7) **Exemption for United States Trustee and Bankruptcy Administrators.** The Bankruptcy Court Miscellaneous Fee Schedule exempts the United States trustee and bankruptcy administrators from the \$15 conversion fee.<sup>105</sup>

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<sup>103</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>104</sup>Item 19 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>105</sup> "[n]o fees are to be charged for services rendered on behalf of the United States . . . or to bankruptcy administrators . . . ." Preamble to the Bankruptcy Court Miscellaneous Fee Schedule.

- (8) **Conversion from Chapters 12 and 13.** When joint debtors file a notice of conversion from a chapter 12 or 13 to a chapter 7, the debtors pay one \$15 fee. **(Credit fund 6855BK.)**
- (a) **Two Fees Due When Cases Split Before Conversion.** If a joint chapter 12 or chapter 13 case splits before the debtors file notices of conversion, each debtor must pay a separate \$15 fee and file a separate notice of conversion.
- 1) **One Fee Due When Cases Split and Only One Converts.** If a joint chapter 12 or chapter 13 case splits and only one debtor spouse files a notice of conversion or motion to convert to chapter 7, the clerk must collect the \$15 fee only from the spouse that files the notice or motion.
- (b) **One Fee Due When Cases Split After Conversion.** When a chapter 12 or chapter 13 joint case first converts to chapter 7 then splits, only one conversion fee is due. By converting first then splitting the debtors have avoided the second conversion fee. Nevertheless, the clerk will collect the fee to split the case.
- (9) **Conversion from Chapter 11.** The clerk must collect the \$15 fee when the party files the motion to convert. If the United States trustee is acting as the chapter 11 trustee and files the motion, the \$15 fee is due only to the extent assets are available in the chapter 11 estate.
- (10) **Special Instruction for Handling \$45 Trustee Fee and \$15 Trustee Surcharge in Converted Cases.** The chapter 7 trustee is entitled to both the \$45 trustee fee<sup>106</sup> and the \$15 chapter 7 trustee surcharge<sup>107</sup> even if the court converted the case either to or from chapter 7. These fees are due when the case is closed. The procedure the clerk may follow is set forth below.
2. **Notice to the Financial Deputy.** It is important to notify the financial deputy of all conversions so that the deputy can make the appropriate adjustments to the financial records.
3. **Accounting.**
- A. **Conversions to Chapter 7 from Any Other Chapter: \$15.00.**
- (1) **Entry.**

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<sup>106</sup>Under 11 U.S.C. § 330(b)(1).

<sup>107</sup>Under 11 U.S.C. § 330(b)(2).

Deposit Fund	\$15.00	11 U.S.C. § 330(b)(2); item 10, Bankruptcy Court Miscellaneous Fee Schedule	6855BK
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- (2) **When the Trustee Is the Movant.** If the trustee serving in the case before the conversion is the movant, the fee is due only from the estate that existed prior to conversion. The clerk will credit the fee to fund **6855BK**.
- (3) **Reporting.** The clerk will keep individual no case ledgers on fund **6855BK** and will include no funds credited to or transferred from fund **6855BK** in the balances the clerk reports on the court's quarterly **AO 183**. Instead, the clerk will report funds credited to or transferred from fund **6855BK** on the courts' monthly financial report (**AO 274**).
- (4) **When the Original Petition Is Filed in a Chapter Other Than Chapter 7.** Since the clerk allocates no portion of the filing fee to the Trustee Deposit Fund (**fund 6855TT**) when a case is filed under a chapter other than chapter 7, when a case converts to chapter 7 no funds are reserved to pay the chapter 7 trustee. Consequently, the clerk must use the following procedure:
- (a) **Transferring the \$45.00 Trustee Fee.** The clerk must prepare a Schedule to Effect Correction of Receipt Transactions (**AO Form 283**) to transfer both the \$45 trustee fee from fund **086900** to fund **6855TT** and the \$15 chapter 7 trustee surcharge from fund **6855BK** to fund **6855TT**. The clerk must post the total \$60 transferred to both the individual trustee ledger and the Treasury control account for fund **6855TT**. The clerk also must reflect the \$60 total on the court's quarterly **AO 183**. The clerk must report receipts and transfers on **AO 274s**. The following examples illustrate this procedure:
- (b) **Example #1. Conversion from Chapter 13 to Chapter 7.** Chapter 13 fee collected: \$155. (Credit \$60 to fund **086900**, \$52.40 to fund **510000**, and \$42.50 to fund **5073XX**). Transfer \$45 from fund **086900** to fund **6855TT**. Transfer \$15 from fund **6855BK** to fund **6855TT**.
- (c) **Example #2. Conversion from Chapter 11 to Chapter 7.** Chapter 11 fee collected: \$800. (Credit \$200 to fund **086900**, \$400 to fund **5073XX**, and \$200 to fund **510000**.) Transfer \$45 from fund **086900** to fund **6855TT**. Transfer \$15 from fund **6855BK** to fund **6855TT**.
- (5) **Note on Cases Filed Before the United States Trustee's Entry on Duty.** In cases filed prior to the United States trustee's entry on duty in the district, the clerk deposited no funds to the United States Trustee System Fund (**fund 507310** now **fund 5073XX**). Consequently, the clerk must transfer \$45 to the

trustee deposit fund (**fund 6855TT**) from the general fund of the Treasury (**fund 086900**) and must transfer the \$15 chapter 7 trustee surcharge from fund **6855BK**. The surcharge applies to all chapter 7 cases *closed* on or after October 22, 1995.<sup>108</sup>

**B. Conversions from Chapter 7 or Chapter 13 to Chapter 11 - \$650.00.<sup>109</sup>**

**(1) Entries.**

General Fund	\$162.50	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	487.50	28 U.S.C. § 589a.(b)(6)	5073XX

**C. Trustee Fees upon Conversion from Chapter 7 to Another Chapter.**

- (1) Trustee Entitled to Payment.** When a chapter 7 case converts to another chapter, the chapter 7 trustee remains entitled to the fee and no transfer of funds is required. The clerk deposited the \$15 trustee surcharge and the \$45 trustee fee to **fund 6855TT**.
- (2) Timing of the Payment to the Chapter 7 Trustee.** The clerk should delay paying a chapter 7 trustee appointed before the case converted until the court confirms a plan under the new chapter. When the clerk waits until confirmation, he or she minimizes the risk of having no funds available to pay the successor chapter 7 trustee in the event the court reconverts the case to chapter 7 and a different chapter 7 trustee is appointed. Chapter 7 trustees share the \$45 fee but are entitled to the full \$15 chapter 7 surcharge.
- (3) Entries when No Chapter 7 Trustee Was Appointed.** In the rare case in which no trustee was appointed, the clerk must transfer the \$45 trustee fee from **fund 6855TT** to **fund 086900**. Additionally, the clerk also must transfer the \$15 trustee surcharge from **fund 6855TT** to **fund 6855BK**. In cases that the United States trustee serves as the case trustee, the clerk must transfer the fees credited to **fund 6855TT** to **fund 5073XX** to satisfy 11 U.S.C. § 330(d).

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<sup>108</sup>See Director's memorandum, November 13, 1995.

<sup>109</sup>The Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) increased the conversion fee to reflect the current filing fee for chapter 11 cases. Consequently, a petitioner will no longer save money by filing under another chapter then converting to chapter 11.



### **Part E. Fees for Interdistrict Transfers.**

1. **No Fee Is Due.** The clerk in the district receiving the transferred case will collect no fee when the parties transfer a case from one district to another.
2. **Transfer of Collected Fees and Case File.** The clerk transfers both the case file and the collected fees when the parties transfer a case pending under chapter 7 from one district to another. The clerk only transfers the case file when the parties transfer a case pending under chapter 11, chapter 12, or chapter 13 from one district to another, the clerk transfers no fees when the parties transfer cases under these chapters.
3. **Accounting.**<sup>110</sup> The clerks from both the transferring court and the receiving court must report trustee fee transfers between districts on their monthly financial report (**AO 274s**) using the following procedures:

#### **A. Transferring Court.**

- (1) Prepare an original and two copies of **AO 283** to initiate the fee transfer between the two districts.
  - (a) Record the **AO 283** on the cash receipt journal as a receipt (increase) to fund **387500** (Budgetary Clearing Account) and a negative receipt (decrease) to fund **6855TT**.<sup>111</sup>
- (2) After recording the **AO 283** on the cash receipts journal, send a copy of the **AO 283** to the court receiving the case to initiate its portion of the transfer.
- (3) Deduct the amount transferred from the deposit fund control account.
- (4) Deduct the amount transferred from the appropriate trustee ledger card.

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<sup>110</sup>See Volume I, Chapter VII, Exhibit I-9 of the Guide for an example of AO 283s for a case transfer. In the past, if the parties transferred a chapter 7 bankruptcy case between districts the transferring district would prepare a Schedule to Effect Correction of Receipt Transactions (**AO 283**) and submit it to the Administrative Office, Financial Records and Reports Section (FRRS). FRRS would process the AO 283, send a copy back to the transferring district, and send a copy to the receiving districts.

<sup>111</sup>Effective October 22, 1995, the total transfer is either **\$60** (including both the \$45 trustee fee and the \$15 trustee surcharge) or the amount credited to the case based on installments paid to the date of transfer.

- (5) Reflect the transfer to the Budgetary Clearing Account on the Statement of Accountability (**AO 274**). Send a copy of the **AO 283** to the FRRS for processing along with the monthly financial report (**AO 274**). FRRS will keep all copies of the **AO 283** sending nothing back to the court.
- (6) Transfer the case docket to the receiving court.

## **B. Receiving Court.**

- (1) After receiving the transferring district's **AO 283**, prepare another **AO 283**.
  - (a) Record the **AO 283** on your cash receipts journal as a receipt (increase) to fund **6855TT** and negative receipt (decrease) to fund **387500**.
- (2) After recording the **AO 283** on the cash receipts journal, send a copy of the **AO 283** to the court transferring the case to indicate the transfer is completed.
- (3) Add the amount transferred to the deposit fund control account.
- (4) Prepare an individual trustee ledger card for the amount transferred.
- (5) Reflect the transfer from the Budgetary Clearing Account on your Statement of Accountability (**AO 274**). Send a copy of the **AO 283** to FRRS for processing along with the **AO 274**. FRRS will keep all copies of the **AO 283** sending nothing back to the court.

## **Part F. Miscellaneous Contested Proceedings Fees**

1. **Fees Due.** The clerk must collect a fee in the amount of one-half of the civil action filing fee under 28 U.S.C. § 1914(a) upon filing certain contested proceedings.<sup>112</sup> The current fee (one-half of the civil action filing fee) is **\$75**.<sup>113</sup> (Credit **fund 510000**.)
  - A. **Application of the Fee.** This fee applies to motions to terminate, annul, modify, or condition the automatic stay arising under 11 U.S.C. § 362(a), motions to compel abandonment of property of the estate under Rule 6007(b) of the Federal Rules of

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<sup>112</sup>Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule. Effective January 1, 1998, the Judicial Conference changed this fee to one-half of the amount of the civil action filing fee found at 28 U.S.C. § 1914(a) for civil actions other than a writ of habeas corpus, the historical basis for the original fee. The prior fee was \$60.

<sup>113</sup>See Director's memorandum, November 24, 1997.

Bankruptcy Procedure, and motions under 28 U.S.C. § 157(d) to withdraw the reference of a case or a proceeding.

- B. Motions to Withdraw the Reference.** The fee applies to all motions<sup>114</sup> filed to withdraw the reference. Accordingly, the fee is due for motions to withdraw the reference of the administrative case, an adversary proceeding, or a contested proceeding. The Judicial Conference amended this item to clarify that the fee applies to motions to withdraw a reference of either a proceeding<sup>115</sup> or a case.<sup>116</sup>
- 2. Exemptions for Certain Motions to Modify the Automatic Stay.** Although the fee is due for filing a motion to modify the automatic stay,<sup>117</sup> the Bankruptcy Court Miscellaneous Fee Schedule provides certain exceptions.

  - A. Co-debtor Stays.** No fee is due to file a motion for relief from the codebtor stay under 11 U.S.C. §§ 1201 and 1301.
  - B. Approvals of Stipulations.** No fee is due to file a motion for court approval of an agreement to any type of relief from the automatic stay.
  - C. Family Support Obligations.** No fee is due to file a motion for relief from the automatic stay by a child support creditor or representative of such creditor if the creditor files the required form.<sup>118</sup>
- 3. Exemption for Trustees' Notice of Abandonment.** A trustee may abandon property of the estate by notice; therefore, no motion is necessary and no fee is due. Additionally, no fee is due if a trustee files a motion seeking a "comfort order."<sup>119</sup>

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<sup>114</sup>Under 28 U.S.C. § 157(d).

<sup>115</sup>Under 28 U.S.C. § 157(d).

<sup>116</sup>Director's memorandum, November 8, 1995.

<sup>117</sup>Arising under 11 U.S.C. § 362(a).

<sup>118</sup>Director's memorandum, November 8, 1995. Exhibit B-8 is a copy of the form. The Judicial Conference approved an amendment to this fee to effectuate section 304(g) of the Bankruptcy Reform Act of 1994. Congress intended that Act to enhance collection of family support obligations.

<sup>119</sup>Bankruptcy Judges Division letter, September 2, 1992.

- A. Creditors' Request for Abandonment.**<sup>120</sup> A party in interest must file a motion to a motion to abandon property. The motion requires judicial action even if it is accompanied by a document entitled "Abandonment" signed by the case trustee. Consequently, a party in interest must pay the fee for filing a motion.<sup>121</sup>
- 4. Combined Motions for Relief from the Automatic Stay and to Compel the Trustee to Abandon Property.** A party may combine a motion for relief from the automatic stay with a motion to compel the trustee to abandon property of the estate and pay a single fee. No fee is due for a combined agreed motion for relief from the stay and to abandon property.<sup>122</sup>
- 5. Accounting.** This fee is deposited to the Special Fund for the Judiciary (**fund 510000**).

**A.**

Special Fund for the Judiciary	\$75.00	510000
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#### **Part G. Fees for Filing Adversary Proceedings.**

- 1. Fees Due.** For complaints initiating any civil action other than a writ of *habeas corpus*, the clerk must collect a fee equal to the filing fee for a civil action in the district court.<sup>123</sup> The fee for filing a civil action is **\$150**.<sup>124</sup> The clerk must collect the fee when the plaintiff files the complaint. (**Credit \$120 to fund 086900; credit \$30 to fund 510000.**)<sup>125</sup>
- A. Removals to Bankruptcy Court.** The fee for filing an adversary proceeding is due whether a party files the action in bankruptcy court originally or a party removes the action to bankruptcy court from another forum. Thus, when a party files a notice of removal, the clerk must collect the prescribed fee for filing an adversary proceeding.
- B. Adversary Proceeding Initiated by a Trustee (or by a Debtor in Possession Acting for the Benefit of the Bankruptcy Estate).**

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<sup>120</sup>11 U.S.C. § 554(b).

<sup>121</sup>Bankruptcy Judges Division memorandum, July 8, 1993.

<sup>122</sup>Bankruptcy Judges Division letter, April 1, 1991.

<sup>123</sup>Item 6, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>124</sup>28 U.S.C. § 1914(a).

<sup>125</sup>Exhibit B-8 is a copy of Form B281, Appearance of Child Support Creditor or Representative.

- (1) **Fees Must Be Collected.** The clerk must collect the fee when a case trustee, including a United States trustee acting as a case trustee in a case, files an adversary proceeding whether by original process or by removal. Additionally, the clerk must collect the fee when a debtor in possession in a chapter 11 or chapter 12 case files an adversary proceeding, except in the circumstances noted below.
- (2) **Fee Payable Only from the Estate.** When due, the fee is payable only from the estate. No fee or portion of the fee is due from the personal assets of the trustee or debtor in possession.
- (3) **Fee Deferred for Insolvent Estates.** If the estate has no liquid funds to pay the fee when the trustee or debtor in possession files the adversary proceeding, the court may defer payment by a trustee or debtor in possession until the estate secures liquid funds. Some courts require an affidavit stating that there are insufficient funds in the estate to pay the fee.
- (4) **Fee May Be Payable from a Chapter 13 Plan.** The fee schedule provides that the trustee must pay the fees for adversary proceedings only from the estate and only to the extent the estate has assets. Consequently, the chapter 13 trustee may pay this fee from the plan payments the trustee holds on deposit.<sup>126</sup>
- (5) **Fee is Due Even if the Action Is Unsuccessful.** The fee is due even if the trustee or debtor in possession is unsuccessful, provided the estate has sufficient funds to pay the fee.<sup>127</sup>
- (6) **Fee Is Given an Administrative Priority in Distribution.** The filing fee is an administrative expense with first priority in payment from the estate along with other administrative expenses.<sup>128</sup> If the funds in the estate are insufficient to pay all of the administrative expenses in full, the filing fee is paid *pro rata* with the other administrative claims.<sup>129</sup>

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<sup>126</sup>Bankruptcy Judges Division memorandum, January 15, 1992.

<sup>127</sup>See *In re The Phoenix Group*, 64 B.R. 527 (Bankr. 9th Cir. 1986).

<sup>128</sup>Under 11 U.S.C. § 507(a)(1).

<sup>129</sup>Classified in § 507(a)(1).

- (a) **Chapter 11 Confirmations.** In chapter 11 cases, the debtor must either pay all court fees in full or provide in its plan for full payment of court fees on the plan's effective date as a condition of confirmation.<sup>130</sup>
- (b) **Chapter 12 and 13 Confirmations.** In chapter 12 and 13 cases, the debtor must make provisions to pay all court fees in full as a condition of confirmation.<sup>131</sup>
- (c) **Cases Converted to Chapter 7.** When the court converts a case to chapter 7, administrative expenses incurred in the chapter 7 case have priority over unpaid administrative expenses (including court fees) incurred in the preconversion chapter.<sup>132</sup>

**C. Exceptions to the Fee.** No fee is due from either the debtor or the United States.

- (1) **No Fee Is Due When Either a Debtor in Possession Acting for the Benefit of an Individual Debtor or an Individual Debtor Initiates the Adversary Proceeding.** When the debtor initiates an adversary proceeding, either by original process or by removal, no filing fee is due. This exemption is inapplicable to a debtor in possession under a chapter 11 or chapter 12 case unless the debtor in possession is engaging in an action for the benefit of an individual debtor, rather than in a fiduciary capacity for the benefit of the bankruptcy estate.
- (a) **Actions for Which the Clerk Must Collect the Fee.** The clerk must collect the fee when a debtor in possession files an adversary proceeding for the benefit of the estate. The following are examples of those actions:
  - 1) § 363(h) -- sale of both the interest of the estate and of a co-owner in property;
  - 2) § 542(a) -- turnover;
  - 3) § 544 -- "strong arm" avoidance;
  - 4) § 545 -- statutory lien avoidance;
  - 5) § 547(a) -- preference avoidance;
  - 6) § 548(a) -- fraudulent transfer avoidance;
  - 7) § 550 -- recovery of avoided transfer from a transferee; and
  - 8) § 553(b) -- recovery of setoff.

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<sup>130</sup>11 U.S.C. § 1129(a)(12).

<sup>131</sup>11 U.S.C. §§ 1225(a)(2) and 1325(a)(2).

<sup>132</sup>11 U.S.C. § 726(b).

- (b) **No Fee Is Due with Dischargeability Complaints in Chapter 11.** Adversary proceedings which a debtor in possession might initiate only for the benefit of the "debtor" include actions under 11 U.S.C. § 1141(d)(2). This statute makes applicable 11 U.S.C. § 523 to chapter 11 individual debtors allowing an individual chapter 11 debtor to file a complaint to determine the dischargeability of a claim. Accordingly, no fee is due for complaints filed by debtors in possession under section 1141(d) of the Code.
  - (c) **No Fee Is Due with Dischargeability Complaints in Chapter 12 Cases.** Adversary proceedings which a debtor in possession might initiate only for the benefit of the "debtor" include actions under 11 U.S.C. § 1228(a)(2). This statute makes applicable 11 U.S.C. § 523 to chapter 12 debtors allowing a chapter 12 debtor to file a complaint to determine the dischargeability of a claim. Accordingly, no fee is due for complaints filed by debtors under section 1228(a)(2) of the Code.
  - (d) **The Nature of Some Actions Determines the Exemption.** Some adversary proceedings -- such as complaints seeking injunctive relief, declaratory judgment, or avoidance of a lien under 11 U.S.C. § 506(d) -- may or may not require a fee. No fee is due if the action benefits an individual debtor. On the other hand, the clerk must collect the fee if the action only benefits a chapter 11 or chapter 12 estate.
- (2) **No Fee Is Due when the Adversary Proceeding Is Filed by the United States.**
- (a) **The United States.** When the United States, other than a United States trustee acting as a trustee in a case, initiates an adversary proceeding, either by original process or by removal, no filing fee is due.
  - (b) **Government Corporations.**<sup>133</sup> The Bankruptcy Court Miscellaneous Fee Schedule fails to treat governmental corporations the same as "the United States." The Schedule provides no exemption from fees for government

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<sup>133</sup>In March 1993, the Judicial Conference approved the elimination of the exemption for federal agencies for the use of electronic access services. In addition, the Conference approved the elimination of the exemption for federal agencies for the fee for reproducing any court record or paper and the fee for performing a search of court records, where electronic access is available. Consequently, corporations treated as "the United States," such as the PBGC, would pay these fees.

corporations unless the circuit's case law<sup>134</sup> or a provision in the legislation governing the particular corporation establishes an exemption.

- 1) **Examples of Corporations Treated as "The United States."** Examples of governmental corporations designated by statute as instrumentalities of the United States are the Federal Deposit Insurance Corporation ("FDIC")<sup>135</sup> and The Pension Benefit Guaranty Corporation (PBGC).<sup>136</sup>
- 2) **Examples of Corporations Not Treated as "The United States."** Neither case law nor statute treat The Securities Investor Protection Corporation (SIPC) as an agency or establishment of the United States government.<sup>137</sup> Examples of other corporations whose enabling legislation fails to establish them as agencies or establishments of the United States are AMTRAK<sup>138</sup> and the Corporation for Public Broadcasting.<sup>139</sup>
- (3) **No Fee Is Due when Cases Are Transferred.** When parties transfer an adversary proceeding from one district to another, no fee is due in the district receiving the proceeding.
- (4) **No Fee Is Due for Third Party Complaints and Other Actions to Add Parties after an Adversary Proceeding Has Been Commenced.** The clerk collects no additional filing fee when a new party is brought into the controversy, either by third party complaint or otherwise, after the adversary proceeding is filed.

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<sup>134</sup>The reason for charging some Federally-created entities is case law stating that the authority to sue and be sued in its own name places the entity in the same position as a private litigant with respect to court costs, including the clerk's fees.

<sup>135</sup>By the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub.L.No. 101-73, (August 9, 1989) ("FIRREA"). 12 U.S.C. § 1819(b), as amended by section 209(4) of FIRREA. FIRREA defined the FDIC as a federal party whenever it appears in Federal court, thus availing it of the Judicial Conference's fee exemption for services rendered on behalf of the United States. The FDIC formerly was denied exemption from payment of court fees, but was designated "an agency of the United States" for purposes of prosecuting and defending actions in the federal courts. Accordingly, the FDIC is exempt from payment of the fee.

<sup>136</sup>General Counsel letter, December 17, 1991.

<sup>137</sup>15 U.S.C. § 78ccc(a)(A).

<sup>138</sup>45 U.S.C. § 541.

<sup>139</sup>47 U.S.C. § 396(b).



- (5) **No Fee Is Due for Transfers from the District Court to the Bankruptcy Court in the Same District.** The fee is due only if a civil action is removed from a state court or a federal court under 28 U.S.C. § 1452. No fee is due when the parties transfer a civil action from the district court to the bankruptcy court in the same district. No fee is due because a transfer from the district court to the bankruptcy court in the same district is a reference under 28 U.S.C. § 157(a).
  - (6) **No Fee Is Due for Securities Investor Protection Act.** No fee is due when the parties remove a civil proceeding filed under the Securities Investor Protection Act (SIPA) to the bankruptcy court. No fee is due because a statute requires a SIPA removal. A SIPA removal is not an exercise of discretion by a party selecting an alternate forum to adjudicate the matter. Since the district court clerk collected a fee to file the proceeding initially, the bankruptcy court clerk collects no additional filing fee.
    - (a) **Limitation to the Exception.** This exception is inapplicable to adversary proceedings *related to* the SIPA proceeding which are removed to the bankruptcy court. In “related to” cases, the clerk must collect the fee for adversary proceedings unless the transfer is from the district court to the bankruptcy court in the same district.
  - (7) **No Fee Is Due from Child Support Creditors.** If a child support creditor or its representative is the plaintiff and files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.<sup>140</sup>
2. **Prohibition Against Refunding the Filing Fee.** The Judicial Conference prohibits waiving or refunding the fee for filing a complaint. The Conference prohibits refunding the fee even if the party filed the complaint in error or if the court dismisses the adversary proceeding.
  3. ***In Forma Pauperis* Complaints.** A request to file an adversary proceeding *in forma pauperis* requires a judicial determination that the individual party meets the *in forma pauperis* standards.<sup>141</sup> The courts are split on whether a bankruptcy court may rule on such a request.<sup>142</sup>

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<sup>140</sup>Item 6, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>141</sup>Set forth in 28 U.S.C. § 1915(a).

<sup>142</sup>The Court of Appeals for the Ninth Circuit has held that bankruptcy courts lack the authority to waive prepayment of filing fees. *Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1992). Cases holding that bankruptcy courts have authority to authorize *in forma pauperis* proceedings under 28 U.S.C. § 1915(a) include: *In re Shumate*, 91 B.R. 23 (Bankr. W.D.Va. 1988); *In re Palestino*, 4 B.R. 721 (Bankr. M.D. Fla. 1980); and *In re Sara Allen Home*,

- A. Only the Prepayment of the Fee Is Waived.** When the court allows a party to proceed *in forma pauperis*, it waives only the prepayment of fees. If the plaintiff recovers a monetary judgment, it must pay the accrued fees in full.
- 4. Procedure if Complaint Not Accompanied by Fee.** If a petitioner files a complaint without either paying the fee or filing a petition to proceed *in forma pauperis*, the clerk may accept the papers and designate them as "received," "accepted," or "lodged for filing" to avoid any issues the petitioner may raise under Federal Rule of Bankruptcy Procedure 5005(a).
- 5. Accounting.** The fee for filing a civil action is \$150<sup>143</sup> and the clerk must collect it when the petitioner files the complaint. Of this fee, the clerk credits \$120 to the general fund of the Treasury (fund 086900) and \$30 to a special fund<sup>144</sup> available to offset funds appropriated for the operation and maintenance of the courts (fund 510000). The fee was last increased on December 18, 1996.<sup>145</sup>

Allocation of Adversary Proceeding Fees<sup>146</sup>

General Fund	\$120.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	30.00	Pub. L. No. 101-162, 101-121	510000

#### **Part H. Fees for Filing Appeals.**

- 1. Fees Due.** The clerk must collect both a notice of appeal fee of \$5 and a docketing fee of \$100 when a party files an appeal in a bankruptcy case or proceeding. The clerk credits both fees to the general fund of the Treasury (fund 086900).
- A. Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Code.** Section 1930(c) of title 28 requires the clerk to collect a fee of \$5 "[u]pon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt

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*Inc.*, 4 B.R. 724 (Bankr. E.D. Pa. 1980).

<sup>143</sup>28 U.S.C. § 1914(a).

<sup>144</sup>Established by 28 U.S.C. § 1931.

<sup>145</sup>See Director's memorandum, November 8, 1996.

<sup>146</sup>See note to 28 U.S.C. § 1931.

of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari." The appellant or petitioner pays the fee. This fee applies to:

- (1) appeals from the bankruptcy court to either the district court or the bankruptcy appellate panel, and
- (2) appeals from either the district court or the bankruptcy appellate panel<sup>147</sup> to the circuit court of appeals.

**B. Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Act.** The notice of appeal fee is inapplicable to Bankruptcy Act Cases.<sup>148</sup>

**C. Appellate Docketing Fee.** The clerk must collect **\$100** for docketing an appeal. The Bankruptcy Court Miscellaneous Fee Schedule, Item 16, provides "[f]or docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule." The fee in Item 1 of the Court of Appeals Schedule is currently **\$100**. This fee applies to appeals from the bankruptcy court to the district court and from the bankruptcy court to the bankruptcy appellate panel. Each party that files a notice of appeal must pay a separate fee, but parties filing a joint appeal must pay only one fee.<sup>149</sup>

**D. Cross Appeal Docketing Fee.** The clerk must collect a separate fee for docketing a cross appeal.<sup>150</sup> The amount of the cross appeal fee is the same as the appellate

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<sup>147</sup>The clerk of the circuit court of appeals collects the notice of appeal fee in appeals from the Bankruptcy Appellate Panel.

<sup>148</sup>Former Bankruptcy Court Miscellaneous Fee Schedule, Item 9, required the clerk to collect a fee of **\$5** upon the filing of a notice of appeal in a proceeding arising under the Bankruptcy Act. The Judicial Conference repealed that fee effective January 1, 1998. In 1997, the items were renumbered and Item 9 became the reopening fee. See Director's memorandum, November 24, 1997, and Bankruptcy Court Administration Division memorandum, December 16, 1997. In November 2000, the Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) again renumbered the items and Item 9 became the chapter 7 trustee's fee.

<sup>149</sup>Effective January 1, 1998, the language of this fee was modified by the Judicial Conference to clarify that the fee should track the fee for filing an appeal to the Court of Appeals. The amount of the fee did not change.

<sup>150</sup>Item 22 of the Bankruptcy Court Miscellaneous Fee Schedule.

docketing fee<sup>151</sup> and is due whenever an appellee files a cross appeal.<sup>152</sup> The clerk collects this fee in addition to the **\$5** fee for filing a notice of appeal.

**E. Exemption for the United States.** No fee is due when the United States is the appellant.<sup>153</sup> When the United States trustee is acting as trustee in a case, however, the clerk must collect the appellate docketing fee and the cross appeal docketing fee.

**F. Exemption for Child Support Creditors.** No fee is due if the appellant is a child support creditor or its representative who has filed the form required by §304(g) of the Bankruptcy Reform Act of 1994.<sup>154</sup>

**G. Exception for Motions for Leave to Appeal.** If a party files a motion for leave to appeal with the notice of appeal, the clerk must collect only the **\$5** fee for filing the notice of appeal. The clerk will collect the **\$100** docketing fee when the court grants the motion for leave to appeal. In an Act case, the Judicial Conference repealed the **\$5** fee, so the **\$100** docketing fee is the only fee the clerk must collect.

**2. Prohibition Against Refunding either the Appellate Notice Fee or the Appellate Docketing Fee.** All fees for bankruptcy appeals are due in full when the clerk receives the documents specified in 28 U.S.C. § 1930(c),<sup>155</sup> unless the party includes a motion for leave to appeal with the notice of appeal. The Judicial Conference prohibits waiving or refunding the fee. The Conference prohibits refunding the fee even if the party files the document in error or if the court denies or dismisses the appeal.

**A. Premature Appeals.** If some party files a notice of appeal after the court announces a decision but before the clerk enters the judgment, order, or decree on the docket, the

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<sup>151</sup>See Director's memorandum, November 24, 1997. Effective January 1, 1998, the Judicial Conference modified this fee so it now tracks the fee charged by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. The amount of the fee was \$100 and this modification left the amount of the fee unchanged.

<sup>152</sup> Within the 10 days under Federal Rule of Bankruptcy Procedure 8002.

<sup>153</sup>For a discussion of which entities constitute "the United States" for purposes of exemption from payment of fees, see the preceding discussion entitled "Adversary Proceeding Initiated by the United States."

<sup>154</sup>Exhibit B-8 is a copy of Form B281, Appearance of Child Support Creditor or Representative.

<sup>155</sup>A separate or joint notice of appeal, an application for appeal, any order allowing or notice of the allowance of an appeal, or an a appeal of a writ of certiorari.

clerk treats the notice of appeal as filed on the same day but immediately following the entry of the judgment, order, or decree on the docket.<sup>156</sup>

3. ***In Forma Pauperis* Appeals.** The courts are divided whether the bankruptcy courts have the authority to waive the fee.<sup>157</sup> In those jurisdictions taking the view that the bankruptcy courts have the authority to waive the fee, a party may proceed with the appeal *in forma pauperis* only if the court determines that he or she meets the standards stated in 28 U.S.C. § 1915.
4. **Procedure if Appeal Not Accompanied by Fee.** The clerk must accept the appeal even if it is submitted with neither the fee nor the petition to proceed *in forma pauperis*. An appellant may file a notice of appeal without paying the fee simultaneously.<sup>158</sup>
5. **Accounting.** The clerk credits both the **\$5** notice of appeal fee and the **\$100** docketing fee to the general fund of the Treasury (**fund 086900**).

General Fund	\$ 5.00	31 U.S.C. § 3302(b)	086900
General Fund	100.00	31 U.S.C. § 3302(b)	086900

#### **Part I. Fees Due upon Dismissal**

1. **Fees Due (Filing Fee and Installment Payments).** The debtor's obligation to pay the filing fees is unchanged by a dismissal. These fees are still due and the clerk has an obligation to pursue collection.
2. **Fees Due to the Chapter 7 Trustee.**

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<sup>156</sup>See Fed. R. Bankr. P. 8002(a).

<sup>157</sup>The Court of Appeals for the Ninth Circuit has held that bankruptcy courts lack the authority to waive pre-payment of filing fees under 28 U.S.C. § 1915(a). *Perroton v. Gray* (*In re Perroton*), 958 F.2d 889 (9th Cir. 1992). In contrast, *In re Moore*, 86 B.R. 249 (Bankr. W.D. Okla. 1988), holds that bankruptcy courts have the authority to grant leave to appeal *in forma pauperis* under 28 U.S.C. § 1915(a).

<sup>158</sup>*Parissi v. Telechron*, 349 U.S. 46 (1955). Rule 3(a) of the Federal Rules of Appellate Procedure conforms to this view: "Failure of an appellant to take any step other than the timely filing of a notice of appeal shall not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal." (See also General Counsel memorandum, April 15, 1993.)

**A. Chapter 7 Dismissals Before the Meeting of Creditors.** The chapter 7 trustee is entitled to the \$45 portion of the filing fee and the \$15 chapter 7 trustee surcharge even if the court dismisses the case before the meeting of creditors.<sup>159</sup>

(1) **Pre-October 22, 1995 Cases.** In a case filed before October 22, 1995, in which the debtor defaults on the installment payments, the case trustee will receive that portion of the \$45 fee received<sup>160</sup> and apportioned to the **6855TT** account and if the case closed after October 22, 1995, the full \$15 trustee surcharge. The clerk will charge the \$15 trustee surcharge to **fund 6855UF**.

(2) **Post-October 22, 1995 Cases.** In a chapter 7 case filed after October 22, 1995, in which the debtor defaults on the installment payments, the case trustee will receive that portion of the \$45 fee received and apportioned to the **6855TT** account and the full \$15 trustee surcharge.<sup>161</sup> The clerk will charge **6855TT** account for that portion of the \$45 fee and \$15 chapter 7 trustee surcharge collected and will charge **fund 6855BK** for funds needed to be added to the total from **6855TT** to pay the full \$15 required by 11 U.S.C. § 330(b)(2).

### **3. Accounting.**

**A. Chapter 7 Dismissals before a Trustee Is Appointed.** The clerk must make two adjusting entries if no chapter 7 trustee is appointed before the court dismisses the case. First, the clerk must transfer the \$45 trustee fee initially credited to the deposit fund (**fund 6855TT**) from fund **6855TT** to the general fund of the Treasury (**fund 086900**). Second, the clerk must transfer the \$15 trustee surcharge initially credited to the deposit fund (**fund 6855TT**) from fund **6855TT** to fund **6855BK**.

### **Part J. Fees for Reopening Cases.**

**1. Fees Due.** The clerk must collect the same fee upon filing a motion to reopen as he or she would collect upon filing a new case<sup>162</sup> on the same day. No fee is due if the reopening either is to correct an administrative error or to file an action related to the discharge. The

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<sup>159</sup>Held under section 341 of the Bankruptcy Code.

<sup>160</sup>Under 28 U.S.C. § 1930 (a)(1).

<sup>161</sup>Exhibit B-6 is an example.

<sup>162</sup>The filing fee under 28 U.S.C. § 1930(a).

court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.<sup>163</sup>

**A. Bankruptcy Code Cases.** The clerk collects neither the \$30 administrative fee nor the \$15 chapter 7 trustee surcharge when a party reopens a case. On the other hand, the clerk must collect the filing fee<sup>164</sup> when a party files a motion to reopen a case unless the reopening is either to correct an administrative error or to file an action related to the discharge. The amount of the fee due is the same as the filing fee in effect for filing a new case on the date the petitioner files the motion.<sup>165</sup>

- (1) **Fee Not Refunded.** The fee is for the motion to reopen. The Judicial Conference prohibits refunding the fee if the court denies the motion.
- (2) **Exemption to Correct an Administrative Error.** On motion by the court or a party in the case, the court may waive the reopening fee if the case is being reopened to correct an administrative error. To qualify for the exemption, either the clerk or the court itself must have made the error. The phrase "to correct an administrative error" does not include errors by the debtor, the debtor's attorney, or the trustee.
- (3) **Exemption for Actions Related to Discharge.** No fee is due if the case is reopened to file an action related to the debtor's discharge.<sup>166</sup> Nevertheless, a creditor must pay the fee for filing the complaint initiating the adversary

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<sup>163</sup>Prior to January 1, 1998, Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule provided for a \$5 fee for filing an appeal in an Act case. On January 1, 1998, the Judicial Conference repealed that fee and renumbered as Item 9 the previously unnumbered fee for reopening a case. In November 2000, the Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) again renumbered the items and Item 9 became the chapter 7 trustee's fee.

<sup>164</sup>Prescribed by 28 U.S.C. § 1930(a).

<sup>165</sup>See Bankruptcy Court Miscellaneous Fee Schedule, Item 11; Fed. R. Bankr. P. 4007(b).

<sup>166</sup> Federal Rule of Bankruptcy Procedure 4007(b) states that: "A complaint [to obtain a determination of dischargeability of a debt] other than under [Code] § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule." The Judicial Conference has stated that this exception is triggered when a case "is reopened for the purpose of issuing restraining orders or for other proceedings in connection with a discharge granted in the original [case]." JCUS-MAR 69, p. 26.

proceeding. The debtor is exempt from the adversary filing fee if the debtor files the complaint.<sup>167</sup>

- (4) **Exemption for the U.S. Trustee and Bankruptcy Administrators.** The United States trustee and bankruptcy administrators are exempt from the reopening fee.<sup>168</sup> Nevertheless, if the United States trustee is acting as a “private trustee,” he or she must pay the reopening fee unless the court waives or defers the fee.
- (5) **No Exemption for Private Trustee.**<sup>169</sup> A private trustee must pay the reopening fee unless the court waives or defers the fee. If the court declines to waive or defer the fee, a private trustee must use personal funds to pay the reopening fee and other expenses associated with the reopening. If a private trustee successfully recovers assets for the estate, he or she may apply for reimbursed of these expenses from the estate.
  - (a) **Waiver or Deferred Payment Permitted for Private Trustee.** The court may either waive this fee under appropriate circumstances or defer payment of the fee by the trustees pending discovery of additional assets.<sup>170</sup>
  - (b) **Trustee Reimbursed upon Recovery.** A private trustee must pay the reopening fee from his or her personal funds unless the court waives the fee or defers payment of the fee pending recovery of additional assets. If the trustee pays the reopening fee from personal funds and recovers assets for the estate, the trustee may request reimbursement as an administrative expense. The clerk, in coordination with the office of the United States trustee or bankruptcy administrator, must determine whether the case trustee has been paid the \$45 portion that represents the trustee fee prior to reimbursing the trustee from **fund 6855TT**.

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<sup>167</sup>Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>168</sup>Because the reopening fee is part of the Bankruptcy Court Miscellaneous Fee Schedule, the provision exempting the fee for services rendered on behalf of the United States applies. See preamble to the Bankruptcy Court Miscellaneous Fee Schedule in Exhibit B-2. One court has held that the exemption applies to a United States trustee acting in his or her official capacity as a representative of the government. *In re Pomaville*, 183 B.R. 187 (Bankr. D. Minn. 1995).

<sup>169</sup>Under 28 U.S.C. § 586(a)(1), a “private trustee” is anyone who is a member of the chapter 7 trustee panel that is maintained and supervised by the United States trustee.

<sup>170</sup>The Judicial Conference modified the reopening fee effective January 1, 1998.



(6) **No Exemption for Reopening to Add a Creditor.** The debtor must pay the reopening fee and the fee for amending the schedules or lists of creditors to reopen a case to add a creditor. If the clerk must retrieve the case file from an off-site storage location, the debtor must also pay the retrieval fee.

**B. Bankruptcy Act Cases.** When the court reopens a case under the Bankruptcy Act of 1898, the amount of the fee due is the same as the filing fee due for cases filed on September 30, 1979, the last day cases were eligible to be administered under the 1898 Act.<sup>171</sup>

**C. Unpaid Balance of Original Filing Fee in Reopened Case.** If installments of the original filing fee are due when a debtor files a motion to reopen, the Administrative Office's policy is to require the debtor to pay all remaining installments as well as the reopening fee. Although the amount of the reopening fee is the same as the fee for filing a new case, the two fees are for different services. The original fee is for filing the bankruptcy petition, and the reopening fee is for filing the motion to reopen the case.

## 2. Accounting.

**A. Same as the Original Filing Fee.** The accounting for the reopening fee is the same as the accounting for the original filing fee for each chapter of the Bankruptcy Code. Refer to the section on filing fees for charts and discussions of the entries.

(1) **Allocation of Filing Fee in Reopened Case.** The clerk allocates the reopening fee to the various funds exactly as the original filing fee.<sup>172</sup> Note, however, that the clerk collects neither the \$30 administrative fee nor the \$15 trustee surcharge when a case is reopened.

(2) **\$45 Trustee Fee in Reopened Case.** A trustee is appointed to serve in a reopened case only if the court determines that a trustee is needed.<sup>173</sup> No trustee is appointed in a chapter 7, a chapter 12, or a chapter 13 case<sup>174</sup> unless the court determines that a trustee is necessary either to protect the interests of creditors and the debtor or to ensure the efficient administration of the case. If no trustee is appointed in a reopened chapter 7 case, the clerk transfers the trustee's portion of the filing fee from **fund 6855TT** to **fund 086900**.

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<sup>171</sup>Exhibit B-3 is the schedule of filing fees for Act.

<sup>172</sup>See Exhibit B-4.

<sup>173</sup>Section 703(c) of the Code.

<sup>174</sup>Fed. R. Bankr. P. 5010.

- (3) **Source of \$15 Chapter 7 Trustee Surcharge.** In a reopened case, fees due for motions to convert<sup>175</sup> generate the funds to pay the \$15 chapter 7 trustee surcharge. Transfer \$15 from **fund 6855BK** to **fund 6855TT**.

#### **Part K. Miscellaneous Administrative Fees.**

1. **General Discussion.** Section 1930(b) of title 28, United States Code, authorizes the Judicial Conference to prescribe fees in bankruptcy cases in addition to the filing fee prescribed by 28 U.S.C. § 1930(a). Accordingly, the Judicial Conference prescribed the Bankruptcy Court Miscellaneous Fee Schedule which is Exhibit B-2. Those fees that are associated with administrative matters are discussed below.
2. **Accounting Generally.** Federal agencies must have statutory authority to keep and use the revenues they generate.<sup>176</sup> Since the judiciary has the authority to use some of the revenues, the courts generate but not others, the clerk credits some of the revenues the bankruptcy courts generate to the special fund for the judiciary and others to the general fund. The courts track these credits by using separate fund numbers. The clerk also assigns special receipt account numbers to revenues credited to the general fund to track each kind of receipt. The Bankruptcy Court Miscellaneous Fee Schedule indicates the fund number credited for each fee and whether the fee is available to the judiciary.
3. **Waivers Must Be Authorized.** Although the Bankruptcy Court Miscellaneous Fee Schedule provides for deferring or waiving certain fees,<sup>177</sup> it provides no authority for deferring or waiving all fees. Although by enacting 28 U.S.C. § 1930(b) Congress delegated the authority to prescribe fees to the Judicial Conference, it delegated no authority to prescribe fees to the local courts. Moreover, the clerk must construe Federal Rule of Bankruptcy Procedure 9029, authorizing the court to promulgate local rules, in harmony with 28 U.S.C. § 2071(a), requiring all local rules to be "consistent with Acts of Congress." Accordingly, a court has no authority to adopt a local standing order, rule, or procedure independently deferring or waiving any items in the fee schedule.

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<sup>175</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>176</sup>31 U.S.C. § 3302. In some cases, the Judicial Conference has recommended the establishment of new fees or increases to existing fees conditioned upon the Congress enacting legislation permitting the judiciary to retain the income received.

<sup>177</sup>E.g., for filing a complaint when the trustee or debtor in possession is the plaintiff and for waiving fees for amending schedules, securing copies of the local rules, reopening fees (waiver or deferral), electronic access fees, and the filing fee for a complaint when the debtor is the plaintiff.

**4. Fees Due.**

**A. Reproduction Fee (Item 1 - Miscellaneous Fee Schedule).** The clerk must collect **50 cents per page** for reproducing any record or paper. This fee applies to paper copies made from original documents, microfiche or microfilm, or electronic files. **(Credit fund 322350.)**

- (1) Fee Applicable to Paper Copies of Electronic Records.** The clerk must collect this fee for making paper copies of electronically-maintained court records, such as dockets and creditor lists.
- (2) Exemption for Federal Agencies.** This fee applies to services rendered on behalf of the United States only if the record or paper requested is available through electronic access.
- (3) Voluminous Requests by Federal Agencies.** The clerk may satisfy frequent or voluminous requests for copies by federal agencies by inviting the agency representative to the court to use the court's copying facilities.
- (4) Documents Faxed by the Clerk's Office.** The Judicial Conference intends this fee to reimburse the government for the time and expense of providing copies. Consequently, the clerk must collect it whenever the clerk faxes documents. Nevertheless, the clerk may discourage the staff from using the court's facsimile equipment to provide copies of documents. The staff should use the facsimile machines primarily for conducting the court's internal business.
- (5) Exemption if an Outside Agency Produces Copies.** The fee applies only to copies provided by the clerk's office. Some courts contract with outside organizations to provide copies of court documents. They often can make copying service available at a price lower than the fee prescribed by the Judicial Conference for copies provided by the clerk. If the clerk decides to use a privately operated copying service, he or she must award the court's contract to the provider through the competitive process. The clerk may consult the Contracts Division of the Administrative Office to ensure that the court complies with all applicable regulations.
- (6) FEMA Waiver.** On March 4, 1995, the Judicial Conference adopted a general policy permitting a waiver of fees for copies of documents required by FEMA from victims of natural disasters for emergency aid applications. This policy permits the Director of the Administrative Office of the United States Courts to authorize a waiver of copying, search, microfiche or microfilm copying and retrieval of archived documents.

(7) **Accounting - 28 U.S.C. § 1930(b)(1).**

- (a) The clerk deposits receipts the Treasury's general fund account 32250.

General Fund	\$.50 per page	31 U.S.C. § 3302(b)	322350
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**B. Certification Fee (Item 2 - Miscellaneous Fee Schedule).** The clerk must collect **\$7** for certifying any document or paper, whether the clerk makes the certification directly on the document or by separate instrument. For exemplifying any document or paper, the clerk must collect twice the amount of the charge for certification. **(Credit fund 322360.)**

- (1) **Comment.** The Judicial Conference amended the exemplification fee, effective January 1, 1998. Exemplifications are twice the amount charged for certifications because of the additional time and resources required.

- (2) **Combined Search/Certification.** If the clerk certifies the results of a search, or conducts a search to retrieve the document he or she is certifying, the clerk must collect the \$5 certification fee in addition to the \$15 search fee. Additionally, the clerk must charge appropriate copy fees.

(3) **Accounting. - 28 U.S.C. § 1930(b)(2).**

- (a) The clerk deposits receipts to the Treasury's general fund account 322350.

General Fund	\$5.00	31 U.S.C. § 3302(b)	322350
Special Fund for the Judiciary	\$2.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

**C. Reproducing Recordings of Proceedings (Item 3 - Miscellaneous Fee Schedule).** The clerk must collect **\$20 including the cost of materials** for reproducing magnetic tape recordings whether cassette or reel-to-reel. **(Credit fund 322350.)**

- (1) **Comment.** The clerk must collect fees to reproduce recordings of proceedings and for each portion of a recording reproduced. The clerk must collect fees for video as well as audio tapes. Originally, the clerk collected this fee for magnetic tape recordings, but, at its March 2001 session, the Judicial Conference expanded the fee by removing the reference to the particular medium.

(2) **Federal Agency Exemptions.** Federal agencies have no exemption from this fee when the record is available through the court's CM/ECF system.

(3) **Accounting - 28 U.S.C. § 1930(b)(3).**

(a) The clerk deposits receipts to the Treasury's general fund account 322350.

General Fund	\$15.00 per page	31 U.S.C. § 3302(b)	322350
Special Fund for the Judiciary	\$ 5.00 per page	P.L. 101-162, 101- 121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

**D. Amendments to Scheduled, List of Creditors, Matrix, or Mailing Lists (Item 4 - Miscellaneous Fee Schedule).**<sup>178</sup> The clerk must collect \$20 for each amendment to a debtor's schedules of creditors or lists of creditors. Nevertheless, the bankruptcy judge may waive the charge for good cause. **(Credit fund 086900.)**

(1) **The Fee Is Assessed Per Filing.** If an amendment contains more than one change to the list of creditors, the clerk may charge only one \$20 fee. The clerk must charge a fee must to add creditors, delete creditors, change the amount of a debt, or change the classification of a debt.

(2) **No Fee to Change Addresses.** No fee is due to change the address of a listed creditor. Federal Rule of Bankruptcy Procedure 2002(g) provides that creditors may designate the address to which notices must be sent occasionally causing a change to the original schedule. The clerk must amend only the mailing matrix in such circumstances; schedules need no amendments if the only change is an updated address.

(3) **No Fee Charged to Add Attorney.** No fee is due to add the name and address of an attorney for a creditor already listed on the original schedules so that the attorney can receive copies of notices. The attorney is added as an agent for a creditor already included on the schedule.

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<sup>178</sup>The Judicial Conference modified this fee twice. First, effective January 1, 1998, the Conference eliminated the requirement that the clerk ascertain whether notice of the filing was sent to creditors before assessing the fee. The Conference determined that this notice requirement was unduly burdensome. Second, at its March 2001 session, the Conference made clear that the fee applied to the matrices and mailing lists of creditors.

- (4) **Waivers for Good Cause.** The Bankruptcy Court Miscellaneous Fee Schedule permits the judge "for good cause [to] waive the charge in any case." This provision requires an individual finding in each case. It provides no authority to a court to "abolish" the fee by granting a blanket waiver by local rule or general order. The court may designate the factors in a local rule that will be considered "good cause" for a waiver, but the burden must remain on the party to make a showing of good cause. A blanket waiver vitiates the debtor's incentive to furnish complete and accurate schedules and lists at the outset of the case, which is the purpose of this fee. Such a blanket waiver also deprives the government of reimbursement for the services it must perform upon the filing of an amendment. An attorney's ignorance of the fee requirement usually fails the test for "good cause."<sup>179</sup>
- (5) **Exception for Chapter 13 Cases Converted to Chapter 7.** No fee is due when a debtor files a schedule of post-petition debts after converting from chapter 13 to chapter 7. The Federal Rules of Bankruptcy Procedure requires the supplemental filing.<sup>180</sup> The Judicial Conference considers the schedule of post-petition debts a supplemental filing, in contrast to an amendment, not only because the Federal Rules require it but also because the debtor was unable to schedule these debts on the original filing.<sup>181</sup> Furthermore, charging a fee may discourage the debtor from complying with the rule.
- (6) **Accounting - 28 U.S.C. § 1930(b)(4).**

- (a) The clerk deposits receipts to the Treasury's general fund account 086900.

General Fund	\$20.00	31 U.S.C. § 3302(b)	086900
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- E. Records Search (Item 5 - Miscellaneous Fee Schedule).** The clerk must charge **\$20** per name or per item searched for every search of the bankruptcy court's records. **(Credit fund 322360.)**

- (1) **Fee Independent of Request for Certification.** The charge applies regardless of whether certification is requested and the charge applies regardless of whether the answer is in writing. If the clerk makes copies of court documents in connection with a search, the clerk must charge the copy fee in addition to the

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<sup>179</sup>General Counsel letter of March 27, 1989; General Counsel memorandum of October 25, 1988.

<sup>180</sup>Pursuant to Federal Rule of Bankruptcy Procedure 1019(5).

<sup>181</sup>Bankruptcy Judges Division memorandum, October 28, 1992.

search fee. If the clerk certifies the document, the clerk also must charge the certification fee.<sup>182</sup>

- (2) **Application of the Fee.** The fee applies either when the request for information requires an examination of case files to retrieve the information or when the request fails to identify the documents by an accurate case and docket number. Nevertheless, no fee is due for requests for information readily retrievable through an automated database, docket card, index card, or similar system.
- (3) **Exemption for Federal Agencies.** This fee applies to services for the United States only if the agency can retrieve the information requested electronically.
- (4) **Public Use of Automatic Data Bases Encouraged.** The clerk must provide services to the public. Nevertheless, limited budgets compel each court to balance its obligation to the public with its obligation to the court and the litigants before it. Since automated databases will reduce the resources needed to respond to search requests, the clerk must encourage the public to use them.
- (5) **Accounting - 28 U.S.C. § 1930(b)(5).**

- (a) The clerk deposits receipts to the Treasury's general fund account 322360.

General Fund	\$15.00	31 U.S.C. § 3302(b)	322360
Special Fund for the Judiciary	\$ 5.00	P.L. 101-162, 101- 121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- F. Fee for Filing or Indexing Any Paper Not in a Case or Proceeding for Which a Filing Fee Has Been Paid (Item 7 - Miscellaneous Fee Schedule).** The clerk must charge **\$30** for filing or indexing any paper not associated with a case or proceeding for which a filing fee has been paid, including registering a judgment from another district.<sup>183</sup> (**Credit fund 086900**).

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<sup>182</sup>Director's memorandum, July 1, 1993. See the discussions of copy fees and of the electronic access fee. Exhibit B-7 is the Search Fee Guidelines for Bankruptcy Courts. The Judicial Conference approved these guidelines initially in 1993 and revised them in 1997. See Director's memorandum, November 24, 1997.

<sup>183</sup> At its March 2001 session, the Judicial Conference removed specific examples of when the fee should apply to state simply that the fee shall apply when filing or indexing a document not in a case or proceeding for which a filing fee has already been paid.

- (1) **Application of the Fee:** The clerk must charge the fee upon receiving:
- (a) a request to register a judgment entered in another district,
  - (b) a motion for a protective order or to quash a subpoena issued in a case pending in another district,
  - (c) a request to perpetuate testimony concerning a potential adversary proceeding under Federal Rule of Bankruptcy Procedure 7027,
  - (d) a request to register a discharge order under Federal Rule of Bankruptcy Procedure 4004(f), or
  - (e) any other request to register with the court a document not in a case or proceeding.
- (2) **Foreign Judgments.** A “foreign judgment” is a judgment from outside the bankruptcy court’s own district. The fee to register a foreign judgment covers any clerical services associated with enforcing the judgment, such as issuing writs of execution.
- (3) **Dual Registrations of Judgments.** Federal Rule of Bankruptcy Procedure 5003(c) provides that a prevailing party may request that a district court clerk keep and index judgments or orders affecting title to or liens upon real or personal property and judgments or orders for the recovery of money or property with the civil judgments of the district court. Accordingly, a party may register a foreign judgment with the bankruptcy court and, having paid a fee to the bankruptcy clerk, request that the district court clerk register the judgment with the district court without payment of a second fee. In all other instances that some party requests that the clerks in both the district and the bankruptcy courts register a foreign judgment, each clerk must charge a separate \$20 filing/indexing fee.
- (4) **Accounting - 28 U.S.C. § 1930(b)(7).**
- (a) The clerk deposits receipts to the Treasury’s general fund account 086900.

General Fund	\$20.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$10.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- G. **Microfilm (Item 12 - Miscellaneous Fee Schedule).** The clerk must charge **\$4** for each microfiche sheet of film or microfilm jacket copy of any court record. (**Credit fund 322350**).



General Fund	\$3.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$1.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

**H. Retrieval from Offsite Storage (Item 13 - Miscellaneous Fee Schedule).** The clerk must charge **\$35** to retrieve a record from a Federal Records Center, National Archives, or other storage location removed from the court's place of business. **(Credit fund 322360.)**

- (1) **Reopened Cases.** If the clerk must retrieve a file because the court reopened the case, the clerk must collect a retrieval fee from the party that requested the reopening even when no reopening fee is charged. The clerk must collect the fee for each case file retrieved.
- (2) **Consolidated Cases.** If the court consolidates several cases for disposition but the case files are filed separately with the Federal Records Center or National Archives, the clerk must collect a fee for each file separately stored.
- (3) **Premature Retirements.** If the clerk retires a file early (*i.e.*, before the time for filing an appeal has expired) due to a shortage of space in the courthouse, no fee is due.
- (4) **Referrals to Storage Facilities.** Before the clerk refers requests for case files directly to the storage facility, he or she must first contact the storage facility to insure it can accommodate walk-in requests to review and to photocopy records. Many Federal Records Centers have neither the facilities nor the staff to accommodate walk-in requests. Alternatively, all Federal Records Center can process on-line requests for copies of archived documents.

**I. Returned Check Fee (Item 14 - Miscellaneous Fee Schedule).** The clerk must collect **\$35** when a bank returns a check for insufficient funds - 28 U.S.C. § 1930(b)(14). **(Credit fund 322360.)**

**(1) Accounting**

General Fund	\$25.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$10.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- (2) **Comment:** The clerk may waive the fee if the clerk resubmits the check and it then clears. When a trustee closes an estate's bank account 90 days after distributing all payments to creditors and then pays the remaining balance to the clerk, normally no fee is due from the trustee if the bank errs by first paying a stale check and then refusing the check given to the clerk for insufficient funds. If the trustee's checks bore the notice "void after 90 days," the bank paid the stale check in error and the clerk should waive the fee.
- J. Fee for Providing Local Rules (Item 17 - Miscellaneous Fee Schedule).** The court may collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge and may provide them either in hard copy or in an electronic format. **(Credit fund 322340.)**
- K. Registry of Funds Fee (Item 18 - Miscellaneous Fee Schedule).** The clerk must charge for handling the registry funds deposited with the court. The clerk assesses the charge from interest earnings according to the fee schedule issued by the Director of the Administrative Office of the United States Courts. **(Credit fund 510100.)**<sup>184</sup>
- L. Repealed Provisions:** The Judicial Conference repealed items 10,<sup>185</sup> 11,<sup>186</sup> and 15<sup>187</sup> of the Miscellaneous Fee Schedule. These items were filled when the Miscellaneous Fee Scheduled was renumbered by the Courts Improvement Act of 2000.

#### **Part L. Fee Schedule for Electronic Public Access**

- 1. Fee for Electronic Access to Court Documents.** The clerk must charge **60 cents per minute** for electronic access to the court's data. The court may, for good cause, exempt persons or classes of persons from this fee to avoid unreasonable burdens and to promote

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<sup>184</sup>For a detailed discussion of this fee and the proper method of calculation see the Guide to Judiciary Policies and Procedures (Guide), Vol. I, Ch. VII, Part J.6.

<sup>185</sup>Effective January 1, 1998, the Judicial Conference repealed the fee for processing claims. The Conference found that this fee was more burdensome to collect than the value of the revenue collected. See Director's memorandum, November 24, 1997.

<sup>186</sup>Effective January 1, 1998, the Judicial Conference repealed the fee for transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff. The Judicial Conference repealed this fee finding that no courts were providing these services. See Director's memorandum, November 24, 1997.

<sup>187</sup>At its March 1997 meeting, the Judicial Conference eliminated the fee for mailing labels because the courts were no longer providing this service.

public access to this information. Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is due under this provision until an account holder accrues charges of more than \$10 in a calendar year. The clerk deposits this fee to the Judiciary Information Technology Fund. The clerk must collect this fee from the United States.<sup>188</sup> **(Credit fund 5114PF.)**

2. **Printing Electronic Records.** The clerk must collect ten cents per page for printing copies of any record or document accessed electronically at a public terminal in the courthouse.. This fee shall apply to services rendered on behalf of the United States if the record requested is available remotely through the court's electronic access system.
3. **PACER Searches.** For every search of court records conducted by the PACER Service Center, \$20.
4. **Comment:** The Judicial Conference modified the electronic access fee in March 1991, March 1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), and March 1996 (reducing the fee to \$.60 per minute).
5. **Application of the Fee.** This fee applies to all public access electronic record retrieval systems in the courts, including (but not limited to) PACER. Effective October 1, 1993, the Judicial Conference eliminated the exemption for federal agencies. The fee now applies to all federal agencies except those funded by judiciary appropriations, such as bankruptcy administrators. To both mitigate the pressure on clerks' office operations that could result from eliminating the exemption from fees and to encourage federal agencies to use either remote terminals or the public access terminals in clerks' offices to access the files electronically,<sup>189</sup> the Judicial Conference also resolved that "where electronic access is available, in order to encourage the use of electronic access both from remote locations and from public access terminals in clerks' offices," the clerk will assess fees against federal agencies for copying court records and for performing searches.<sup>190</sup>

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<sup>188</sup>The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee. The advisory note is attached to this Fee Schedule as Appendix I.

<sup>189</sup>See Director's memorandum, July 1, 1993 and the following discussion of copy, search, and electronic access fees. For a more complete discussion of which entities are "the United States" for purposes of an exemption from fees, see the "Adversary Proceedings Initiated by United States."

<sup>190</sup>Director's memorandum, July 1, 1993. See the discussion of copy and search fees.

6. **Exemptions Allowed.** The court has discretion to grant exemptions in appropriate circumstances. Upon motion, a person or class of persons may seek exemption from the fees by showing an unreasonable burden (e.g., financial hardship or indigence) or a demonstration of public benefit.<sup>191</sup>

- A. **Judicial Conference Guidelines.** The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemptions from this fee. It reads as follows:

The Judicial Conference has prescribed a fee for electronic access to court data, as set forth above in the Miscellaneous Fee Schedule. The schedule provides that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users.

Examples of persons and classes of persons that the court may exempt from electronic public access fees include indigents, bankruptcy case trustees, not-for-profit organizations, and voluntary ADR neutrals among others.

- B. **Procedure.** Courts registered with the billing center in San Antonio must send them a copy of the order granting the exemption as soon as it is entered to prevent the center from billing the party exempted.<sup>192</sup>
- C. **The Clerk's Role.** The clerk has no role in collecting the fee; the Pacer Billing Center in San Antonio handles these collections. All billing and collection will be done without using the clerk's office resources.

#### **Part M. Fees for Bankruptcy Act Cases.**

The *Bankruptcy Forms Manual, Forms and Instructions for the Courts*, (1988) Chapter V contains the charges in Bankruptcy Act cases. Separate charges apply, depending upon the chapter under which the case is closed and whether the court confirmed a plan. The case

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<sup>191</sup>Director's memorandum, October 19, 1992.

<sup>192</sup>Director's memorandum, July 1, 1993.

closing instructions for cases under each chapter of the Bankruptcy Act include instructions for calculating the charges.

As part of the Bankruptcy Code, the Congress imposed a maximum of \$100,000 on the amount that could be charged for the Referees' Salary and Expense Fund in a Chapter XI case.<sup>193</sup> In 1984, Congress also set a maximum charge of \$200,000 for the Referees' Salary and Expense Fund in a Chapter VII case. In 1984, Congress abolished the Referees' Salary and Expense Fund as a separate account in the Treasury.<sup>194</sup> Accordingly, the clerk credits funds collected for the Referees' Salary and Expense Fund to the general fund of the Treasury. (**fund 322360**).

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<sup>193</sup>Bankruptcy Reform Act of 1978, Pub.L.No. 95-598, § 403(e), 92 Stat. 2683 (1978).

<sup>194</sup>Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L.No. 98-353, § 382, 97 Stat. 364 (1984).

## **ATTACHMENTS**

### **EXHIBIT B-1** **28 U.S.C. § 1930**

#### **§ 1930. Bankruptcy Fees**

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under chapter 7 or 13 of title 11, \$155.

(2) For a case commenced under chapter 9 of title 11, \$800.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, \$800.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, \$1,000.

(5) For a case commenced under chapter 12 of title 11, \$200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be \$250 for each quarter in which disbursements total less than \$15,000; \$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the

amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari \$5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

**EXHIBIT B-2**  
**Bankruptcy Court Miscellaneous Fee Schedule**<sup>195</sup>  
[effective July 1, 2001]

Following are fees to be charged for services to be performed by clerks of the bankruptcy courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 1, 3, and 5, or to bankruptcy administrators appointed under Public Law No. 99-554, § 302(d)(3)(I). No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A.

- (1) **Reproducing Records.** For reproducing any record or paper, \$.50 per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access. **(322350)**
- (2) **Document Certification.** For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$7. For exemplification of any document or paper, twice the amount of the charge for certification. **(\$5 to 322360 and \$2 to 510000)**
- (3) **Reproducing Recordings of Proceedings.** For reproduction of recordings of proceedings, regardless of the medium, \$20, including the cost of materials. This fee shall apply to services rendered on behalf of the United States, if the reproduction of the recording is available electronically. **(\$15 to 322350 and \$5 to 510000)**
- (4) **Amending Schedules and Mailing Lists.** For amendments to a debtor's schedules of creditors, lists of creditors, matrix, or mailing lists, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case. **(086900)**
- (5) **Record Searches.** For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, \$20 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. **(\$15 to 322360 and \$5 to 510000)**
- (6) **Filing Complaints.** For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as

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<sup>195</sup>Titles and fund codes are inserted for convenience.



a trustee in a case under title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. If a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required. **(\$120 to 086900 and \$30 to 510000)**

- (7) **Filing and Indexing Foreign Papers.** For filing or indexing any document not in a case or proceeding for which a filing fee has been paid, \$30. **(\$20 to 086900 and \$10 to 510000)**
- (8) **Misc Administrative Fee.** In all cases filed under title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of \$30. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006. **(510000)**
- (9) **Chapter 7 Trustee Fee.** Upon the filing of a petition under chapter 7 of the Bankruptcy Code, the petitioner shall pay \$15 to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). An application to pay the fee in installments may be filed in the manner set forth in Federal Rule of Bankruptcy Procedure 1006(b). **(6855TT)**
- (10) **Motions to Convert.** Upon the filing of a motion to convert a case to chapter 7 of the Bankruptcy Code, the movant shall pay \$15 to the clerk of court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). Upon the filing of a notice of conversion pursuant to section 1208(a) or section 1307(a) of the Code, \$15 shall be paid to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion. **(6855BK)**
- (11) **Motions to Reopen.** For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. **(Same as the original filing - see exhibit B-4)**
- (12) **Microfiche.** For each microfiche sheet of film or microfilm jacket copy of any court record, where available, \$4. **(\$3 to 322350 and \$1 to 510000)**
- (13) **Record Retrievals.** For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$35. **(322360)**
- (14) **NSF Checks.** For a check paid into the court which is returned for lack of funds, \$35. **(25 to 322360 and \$10 to 510000)**

- (15) **Docketing Appeals.** For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee. **(086900)**
- (16) **Petition Ancillary.** For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, the fee shall be the same amount as the fee for a case commenced under chapter 11 of title 11 as required by 28 U.S.C. § 1930(a)(3). **(086900)**
- (17) **Local Rules.** The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge. **(322340)**
- (18) **Registry Funds.** The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts. **(510100)**
- (19) **Splitting Cases.** When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to one-half the current filing fee for the chapter under which the joint case was commenced. **(510000)**
- (20) **Misc. Contested Proceedings.** For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required. **(510000)**
- (21) **Docketing Cross Appeals.** For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. **(510000)**

**EXHIBIT B-3**  
**Electronic Public Access Miscellaneous Fee Schedule**

Following are fees to be charged by the courts in connection with electronic public access to court records. These fees shall apply to the United States unless otherwise stated. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrator programs.

- I. For usage of electronic access to court data via dial up service: sixty cents per minute. For public users obtaining information through a federal judiciary Internet site: seven cents per page. The court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is owed under this provision until an account holder accrues charges of more than \$10 in a calendar year.
- II. For printing copies of any record or document accessed electronically at a public terminal in the courthouse: ten cents per page. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.
- III. For every search of court records conducted by the PACER Service Center, \$20.

**JUDICIAL CONFERENCE ADVISORY NOTES**

Exemptions should be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users. Examples of persons and classes of persons who may be exempted from electronic public access fees include, but are not limited to: indigents; bankruptcy case trustees; not-for-profit organizations; and voluntary ADR neutrals.

The electronic public access fee applies to court data obtained electronically from the public records of individual cases in the court, including filed documents and the docket sheet. Courts may provide other local court information at no cost. Examples of information which can be provided at no cost include: local rules, court forms, news items, court calendars, opinions designated by the

court for publication, and other information - such as court hours, court location, telephone listings - determined locally to benefit the public and the court.

## **EXHIBIT B-4**

### **Schedule of Filing Fees for Cases Under the Bankruptcy Act of 1898 (1)**

Straight Bankruptcy Cases	
Chapters I-VII (§§ 40c(1), 48c, 52a)	\$ 50.00
Railroad Reorganizations	
Section 77 (§ 77(a))	150.00
Municipal Debt	
Chapter IX (§ 85(c))	100.00
Corporate Reorganization	
Chapter X (§ 132)	
If no bankruptcy proceeding is pending	120.00
If a bankruptcy proceeding is pending	70.00
Arrangements	
Chapter XI (§§ 324(2), 40c(1), 48c, 52a)	50.00
Real Property Arrangements	
Chapter XII (§§ 424(2), 40c(1), 48c, 52a)	50.00
Wage Earner Plans	
Chapter XIII (§ 624(2))	15.00

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- (1) This filing fee should be collected when a case is reopened unless the case is reopened to correct an administrative error or for actions relating to the discharge.

## EXHIBIT B-5

### Summary of Allocation of Filing Fees, Administrative Fee, and Trustee Surcharge.

<u>CHAPTER</u>	7	13	11 (non-RR)	11 RR	12	9
<u>FUND</u>						
U.S. (*) Trustee (5073XX)	42.50	42.50	400	500	100	
Judiciary (510000)	52.50	52.50	200	-	-	500
Trustee Deposit (6855TT)	45.00	-	-	-	-	-
Treasury (086900)	15.00	60	200	500	100	300
Judiciary (510000)	30.00	30	30	30	30	30
Trustee Deposit (6855TT)	15.00					
<u>TOTAL</u>	200.00	185.00	830	1,030	230	830

(\*) §302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986, provides that, in the judicial districts in Alabama and North Carolina, the U.S. Trustee fee is to be deposited in the general receipts of the Treasury.

## EXHIBIT B-6

Form B3  
12/94

### FORM 3. APPLICATION AND ORDER TO PAY FILING FEE IN INSTALLMENTS

[Caption as in Form 16B]

#### APPLICATION TO PAY FILING FEES IN INSTALLMENTS

In accordance with Fed. R. Bankr. P. 1006, application is made for permission to pay the filing fee on the following terms:

\$ \_\_\_\_\_ with the filing of the petition, and the balance of

\$ \_\_\_\_\_ in \_\_\_\_\_ installments, as follows:

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

I certify that I am unable to pay the filing fee except in installments. I further certify that I have not paid any money or transferred any property to an attorney or any other person for services in connection with this case or in connection with any other pending bankruptcy case and that I will not make any payment or transfer any property for services in connection with the case until the filing fee is paid in full.

Date: \_\_\_\_\_

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Attorney for Applicant

#### CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.

\_\_\_\_\_  
Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

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ORDER

IT IS ORDERED that the debtor pay the filing fee in installments on the terms set forth in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay, and no person shall accept, any money for services in connection with this case, and the debtor shall not relinquish, and no person shall accept, any property as payment for services in connection with this case.

BY THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*United States Bankruptcy Judge*



**EXHIBIT B-7**  
**Percentage Allocation of Chapter 7 Fees Due at Filing**

Chart #1 shows the filing fee and other fees required to file a chapter 7 case after 10/22/95 and the distribution of those fees among the fund accounts.

CHART #1	Total	6855TT	086900	5073XX	510000
1- 1930(a)(1)	\$155	\$45	\$15	\$42.50	\$52.50
2- 1930(b)Item 8	30	0	0	0	30.00
3- 1930(b)Item 8.1	15	15	0	0	0
4- Total fees Due	\$200	\$60	\$15	\$42.50	\$82.50
5- % distribution	100%	30.0	7.5	21.25	41.25

**EXAMPLE**

For purposes of example, the assumption is that there will be four equal installment payments of \$50.00 approved by the court but the debtor defaults after making two payments.<sup>196</sup>

Chart #2 reflects the installment payment policy that the fees will be prorated among the funds. When the first and second installment payments are made, the full \$50.00 is prorated among the remaining funds (*i.e.*, 6855TT, 086900, 5073XX, and 510000). At that point, the debtor stops paying.

Chart #2	Total	6855TT	086900	5073XX	510000
1 <sup>ST</sup> PAYMENT	\$50.00	15.00	3.75	10.625	20.625
2 <sup>ND</sup> PAYMENT	\$50.00	15.00	3.75	10.625	20.625
3 <sup>rd</sup> PAYMENT					
4 <sup>th</sup> PAYMENT					
Total Paid	\$100.00	30.00	7.50	21.25	41.25
Total Due	\$200.00	60.00	15.00	42.50	82.50

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<sup>196</sup>Bankruptcy Rule 1006(b)(2) limits the number of installments to no more than four to be paid within 120 days, which may be extended to 180 days for cause.

### Trustee Compensation Computation

In our example, each dollar credited to 6855TT (Trustee Escrow Fund) consists of two parts (1/4th trustee surcharge authorized by the Bankruptcy Court Miscellaneous Fee Schedule, Item 9, and 3/4th filing fee authorized by 28 U.S.C. § 1930(a)(1) and 11 U.S.C. § 330(b)(1).

Note: The \$15 trustee surcharge, unlike the portion of the filing fee paid to the trustee, is an entitlement under the statute and is payable regardless of whether or not the debtor in the case has paid the fee.

The amount representing the trustee surcharge after the second installment would be \$6.18 ( $.25 \times \$24.71 = 6.1775$  rounded to \$6.18). The balance of the surcharge owed to the trustee, \$8.82 in this case (\$15.00 minus \$6.18), will be transferred from fund 6855BK to fund 6855TT. This \$8.82 will be added to the \$24.71 already in the 6855TT fund for a total of \$33.53 to be paid to the trustee in this example. This will allow the court to pay the trustee the full \$15 trustee surcharge plus a pro rata share of the filing fee paid into the court.

## **EXHIBIT B-8**

### **Search Fee Guidelines for Bankruptcy Courts**

[Effective January 1, 1998]

#### **Introduction**

The issue of the imposition of the search fee involves an interplay between two different concerns: one, the duty of a clerk's office to provide access to the court's records, and two, the efficient use of the limited resources available in any clerk's office. These guidelines attempt to strike a fair balance between these two competing concerns. In addition, the guidelines are intended to increase consistency of the application of the search fee among courts.

However, the guidelines are meant to inform the clerk's discretion, not to limit it. Thus, the guidelines are not meant to be hard-and-fast rules on the application of the search fee; rather, they are meant to be parameters within which the operations of each individual clerk's office can be adapted.

#### **Guideline No. 1**

Any information which is easily retrieved, with a minimum expenditure of time and effort, should be considered a non-chargeable "retrieval," as opposed to a chargeable search. A search fee should not be charged for a single request for basic information readily retrievable through an automated database. A request of this nature should be considered a "retrieval" and should not be considered a "search."

The advent of BANCAP, NIBS, PACER, and VCIS has greatly diminished the resource strain on a clerk's office when retrieving basic information about a case. Basic information is defined as any information which is easily retrievable from an automated database. Although this information will vary according to which system is being utilized by a particular court, basic information which may be retrieved without a search fee may include: (1) whether a particular debtor has filed a bankruptcy petition and the date of filing (when exact name of debtor is provided by requestor); (2) name of debtor (when case number is provided); (3) the debtor's social security number; (4) whether the case is voluntary or involuntary; (5) what chapter a case was originally filed under; (6) the name of the debtor's attorney; (7) the name of the trustee; (8) whether there are assets or no assets; (9) the date of the Section 341 meeting; and (10) the status of the case generally (i.e., open or closed).

The public should be encouraged to come to the court to conduct searches for information, and to utilize all available automated databases.

#### **Guideline No. 2**

A search fee should be charged for any request for which accurate case and docket number information is not provided by the requestor and which therefore requires a physical search of the court's records.

A request for information where documents or pleadings are not identified by accurate and complete case and docket number and which therefore requires a physical search of the court's records (whether automated or hard copy) will be considered a "search" which is properly chargeable.

#### Guideline No. 3

With limited exceptions, a fee should be charged for all written search requests which require a written response.

A written request is defined as any search request made in writing which requires a written response. Because of the time and resources which must be expended in order to respond to a written request, such a request shall be considered a search which is subject to the fee, even if the request is for basic information which may be obtained from an automated database or from the docket sheet. One exception to this guideline applies to courts which require all search requests to be in writing; in such courts, no search fee should be charged for requests for retrievals of "basic" information, as defined in Guideline No. 1, above. An additional exception is the situation where a written request for "basic" information (as defined above), can be responded to by having the clerk's office staff provide a handwritten response on the requestor's letter (as opposed to requiring a separate document in response) and where the requestor has provided a self-addressed, stamped return envelope. In this situation, the time and effort involved do not warrant the imposition of the search fee.

For tracking and accounting purposes, it is recommended that the court not process a written request until the search fee has been received (subject to the limited exception set forth above).

#### Guideline No. 4

Where requested information is available on VCIS, PACER, or another automated system, a court may have a policy which requires a telephoning requestor to utilize an automated database (VCIS for most individuals and PACER for law firms and other institutions with computer capability), instead of having a court employee conduct the information retrieval.

Much basic information which is sought may be retrievable by a requestor through an automated system without the need for any direct communication with a court employee. In order to maximize the utility of these automated databases and minimize the expenditure of court personnel time, a court may require requestors to use these services where available.

#### Guideline No. 5

In automated courts, a computer terminal with suitable data protection should be made available for use by the public.

Those offices with computer terminals located in a public access area may adopt the policy set forth in Guideline No. 4 for in-person requests for basic information, i.e., a court may require an in-person requestor to utilize its public access terminal rather than having a court employee retrieve the information.

#### Guideline No. 6

Case trustees should be charged the same search fees as all other private individuals or entities.

The Bankruptcy Court Miscellaneous Fee Schedule provides only two stated exceptions from fees, one for the "United States" (i.e., federal agencies) and the other for bankruptcy administrators. Thus, there is no authority for a waiver of fees for case trustees.

Some courts have been expanding upon the exception set forth in Item 6 of the Fee Schedule (filing fees for adversary complaints) and only charging search fees to the case trustee to the extent there is an estate realized. There is no basis for this expansion. Case trustees should be charged the same search fees as other individuals.

#### Guideline No. 7

Requests for archived documents should be charged only the archive retrieval fee of \$25.00 and not an additional \$15.00 search fee.

Item 13 of the Fee Schedule provides that a \$25.00 fee shall be charged for retrieval of a record from any place that such record may be archived. The Fee Schedule does not refer to any additional fee for such retrieval, and it does not appear that the drafters contemplated two separate fees (one for the request and one for the retrieval) to be charged when a particular document is off-site.

However, the search fee may be charged to an individual who makes a request to the clerk's office for box, location, and accession information of a document in order to conduct his or her own search of the Records Center. In such a case, a physical search of the court's records would be necessary in order to obtain the information, and a search fee would be appropriate. In order to reduce the time involved in responding to these types of requests, and also to make this information more accessible to the public, it is suggested that courts either automate this information or make a duplicate accession number book available to the public.

#### Guideline No. 8

The clerk has the general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The clerk of court has the responsibility of being responsive to parties in interest in cases pending in the court. However, this does not mean that either the public or government agencies have an unfettered right to make unreasonable or unduly burdensome demands upon the resources

and personnel of a clerk's office. The clerk may (and should) refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and should encourage entities making such requests to conduct their own search of court records. This includes requests for information which, instead of comprising a single request, include a list of numerous names or items to be searched. Such requestors should be encouraged to utilize automated databases to obtain the desired information.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search or copy requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes from federal agencies, a court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and should allow them to use court copy facilities.

Another area in which the clerk has unlimited authority to refuse to conduct searches is in connection with requests from credit agencies or other entities for special compilations of information about bankruptcy debtors from the regularly-kept public records of the bankruptcy courts. Although the contents of bankruptcy case files are designated as public records under 11 U.S.C. § 107, previously compiled internal dockets or other compilations are not within the scope of section 107. Thus, the clerk is under no obligation to release such internal compilations.

**EXHIBIT B-9**

**Appearance of Child Support Creditor or Representative (Form B281)**

B 281  
(12/94)

**UNITED STATES BANKRUPTCY COURT**

**OF** \_\_\_\_\_

**In re**

Bankruptcy Case No. \_\_\_\_\_

**Debtor**

Address: \_\_\_\_\_

Chapter \_\_\_\_\_

Social Security No(s): \_\_\_\_\_

Employer's Tax Identification No(s). [if any]: \_\_\_\_\_

**APPEARANCE OF CHILD SUPPORT CREDITOR\*  
OR REPRESENTATIVE**

I certify under penalty of perjury that I am a child support creditor\* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

[THIS PAGE IS BLANK]

\_\_\_\_\_  
Date

X \_\_\_\_\_  
Child Support Creditor\* or Authorized Representative

**Summary of Child Support Obligation**

Amount in arrears:

\$ \_\_\_\_\_

If Child Support has been assigned:

Amount of Support which is owed  
under assignments:

Amount currently due per week or per month:  
on a continuing basis:

\$ \_\_\_\_\_  
(per week) (per month)

\$ \_\_\_\_\_

Amount owed primary child support  
creditor (balance not assigned):

\$ \_\_\_\_\_

**Attach an itemized statement of account**

\* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.

## EXHIBIT C-1

### Chapter X. ADMINISTRATIVE FEES AND SERVICES.

#### Part C. Utilization of Resources Outside the Judiciary.

#### CONTENTS

1. Judicial Conference Noticing Guidelines
2. Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c)

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1. Judicial Conference Noticing Guidelines.

Federal Rules of Bankruptcy Procedure 2002(a), (b), (d), (f), and (o) permit the court to direct a person other than the clerk to prepare and mail the notices enumerated in those rules. In addition, beginning in fiscal year 1986, the annual appropriations legislation for the judiciary has contained a provision directing the Administrative Office and the courts to permit and encourage the preparation and mailing of notices in bankruptcy cases by persons other than bankruptcy clerks. In March 1986, the Judicial Conference approved guidelines implementing this statutory directive. The guidelines were amended in March 1990 to conform them to changes in the Bankruptcy Court Miscellaneous Fee Schedule.

For information and reference, the Judicial Conference Noticing Guidelines can be found at Exhibit C-1 to this Part C.

2. Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c).

Section 156(c) of title 28 authorizes bankruptcy courts to use other than court facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases when the costs of such facilities or services are paid for from assets of the estate. The statute further provides that the use of such facilities or services shall be subject to any conditions and limitations which the pertinent judicial council of the circuit may prescribe. The Judicial Conference, at its March 1989 session, approved guidelines for the use of outside facilities or services for consideration by the judicial councils.

For information and reference, the Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c) can be found at Exhibit C-2 to this Part C.



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## EXHIBIT C-2

### "JUDICIAL CONFERENCE OF THE UNITED STATES"

#### GUIDELINES ON NOTICING

1. Purpose. The Bankruptcy Code and Rules afford bankruptcy judges considerable discretion in the allocation of responsibility for providing notice of events in the course of bankruptcy proceedings. Moreover, only limited appropriations and personnel are available to process bankruptcy petitions. The judiciary's current appropriation act encourages the courts to place the burden and expense of noticing on the litigants rather than the taxpayers, and 28 U.S.C. § 156 encourages the courts to explore alternative procedures for furnishing information on the courts' dockets. These guidelines are designed to provide advice for the exercise of the courts' discretion under the Bankruptcy Code and Rules.
2. Generally. Litigants involved in bankruptcy petitions and proceedings should be on a financial footing similar to that of other litigants in the district courts. Parties are generally expected to bear their own costs of litigation, including the costs associated with serving other parties with summonses and copies of pleadings and motions. Conversely, the clerk's office is generally responsible for ensuring that notices have been provided and for providing notice of court-initiated events, such as hearing and trial dates and entry of orders and judgments. The courts should provide for review of the particular circumstances involved in individual situations.
3. Combining Notices. Bankruptcy proceedings generally have more individuals involved as parties who must be notified of hearings and motions than many other civil actions in the district courts. Accordingly, every effort should be made to reduce the clerical work and mailing expenses involved in providing notice by combining notices of different events into a single notice whenever feasible. In addition, many parties routinely receive notices in many cases; and every effort should be made to include notices of several different cases in the same mailing to such parties.
4. "No Asset" Cases. A litigant is not generally denied access to federal courts where indigence precludes payment of certain expenses of litigation. In bankruptcy proceedings a debtor with insufficient assets to pay any of the costs of administration - or only enough assets to pay part of such costs - may well not be able to bear the burden of noticing and should be given appropriate consideration.
5. Fee for Noticing by Clerks. For all notices generated in cases filed under title 11 of the United States Code, 50 cents each. Notices dated prior to January 1, 1987, should be charged at the rate of 25 cents for each notice in excess of fifty notices per set. Notice fees are payable only from the estate and only to the extent there is an estate. (\*\* See Note Below.)
6. Statutory Limitations. Certain provisions of the Bankruptcy Code and Rules limit the judge's discretion to determine who will provide notice by specifying that particular notices will be provided by particular individuals.

- a. Clerk. Under 11 U.S.C. §§ 743 and 762 the clerk must give notice to the Securities and Exchange Commission and the Security Investor Protection Corporation of stockbroker liquidation petitions and to the Commodity Futures Trading Commission of commodity broker liquidation petitions. Where a claim has been transferred and either the transferror or transferee files a proof of claim, the clerk must immediately notify the other of the right to join in the claim under Bankruptcy Rule 3001(e)(3).
  - b. Trustee. Under Bankruptcy Rule 2015, a trustee (or debtor in possession) shall give notice of the petition to every person holding money or property of the debtor who has not already been notified of the petition. Under Bankruptcy Rule 6007, a trustee (or debtor in possession) must furnish whatever notice is given of a proposed abandonment or disposition of property, unless otherwise directed by the court.
  - c. Debtor. The debtor is required to give notice of any amendment to a voluntary petition, list, schedule, or statement to the trustee and to any person affected by the amendment, under Bankruptcy Rule 1009.
7. Specific Factors. In a particular case the court should consider the following specific factors in allocating the burden for providing notices:
- a. The financial ability of the moving party (estate or creditor) to bear the burden.
  - b. The convenience of including notices with other mailings (such as distribution checks), thus reducing total costs.
  - c. Pick-up boxes should be established for persons, such as trustees, U.S. attorneys, etc., who can conveniently pick up notices at the clerk's office on a regular basis rather than mailing notices to such persons.
  - d. The relative technical and administrative capabilities for providing notices on a timely basis - particularly when unusually large numbers of creditors are involved - including the availability of automated data-processing in the clerk's office.
  - e. The availability of reliable commercial services to assist in providing notices. [Note that the court must exercise care in avoiding even the appearance of favoritism and should not direct litigants to one service to the exclusion or detriment of other available services.]
  - f. Any particular circumstances or management concerns in the proceeding that indicate a need to have notices provided by the clerk's office directly.
  - g. The chapter of the Bankruptcy Code and the anticipated number of separate notices to be provided.
8. Certificate. The court or clerk should approve the form and content of any notice not provided by the clerk's office and should receive from the person providing notice a certificate of service that includes a copy of the notice and a list of persons to whom it was mailed.

9. Postage. Ordinarily postage expenses will be borne by the person providing notice which may be reimbursed as a court approved cost of administration. However, in a particular case it may be appropriate to impose on the estate or a litigant only the physical burden of preparing notices while actually mailing the notices through the Clerk's office using official (penalty-mail) envelopes. Clerk's, however, may not provide parties or litigants with penalty-mail envelopes for their use. In those limited instances where the court directs that noticing be performed by someone other than the clerk in no asset cases, reimbursement for postage may be claimed in accordance with provisions established by the Administrative Office of the United States Courts.
10. Assistance. The Administrative Office should be consulted for assistance in unusual circumstances, such as the filing of an exceptionally large petition with massive noticing requirements where insufficient assets are available to bear the cost of providing notices. Where the court itself is interested in using commercial services for providing notices, the Administrative Office should be consulted as to applicable procurement and contracting considerations and procedures.

\*\* The noticing fee was changed effective December 1, 1992 to incorporate an administrative fee in chapter 7 and chapter 13 cases filed on or after December 1, 1992. See B.4.B.(8) of this chapter.

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## EXHIBIT C-3

### GUIDELINES ON USE OF OUTSIDE FACILITIES AND SERVICES

#### GENERALLY

1. Authority. Section 156(c) of title 28 authorizes bankruptcy courts to use outside facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The statute provides that the use of such facilities and services is subject to any conditions and limitations imposed by the pertinent circuit council.

Comments: Section 156(c) was enacted in recognition that the day-to-day activities and administrative requirements in some large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office. Services such as noticing, providing copies of case papers, and processing proofs of claims and interest can sometimes be performed more efficiently outside the bankruptcy clerk's office. The statute authorizes the bankruptcy court to permit third parties to perform these services at the estate's expense.

The need for such outside services is most prevalent in so-called "mega cases," which are extremely large bankruptcy cases with hundreds or thousands of creditors. The staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads.

2. Custodian. Pursuant to 28 U.S.C. § 156(e), the bankruptcy clerk of court is the official custodian of the records and dockets of the bankruptcy court. As custodian of the records and dockets of the bankruptcy court, the bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including those maintained by the debtor or a third party.

Comments: The bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including dockets, claims registers, mailing matrices, and other case papers maintained by the debtor or a third party.

How the bankruptcy clerk assures the security and integrity of the records and dockets depends on the procedures utilized in a particular case.

If the estate has hired personnel to work in the bankruptcy clerk's office, the bankruptcy clerk should supervise their work. If the debtor or a third party maintains claims registers, mailing matrices, or other case papers outside the bankruptcy clerk's office, the bankruptcy clerk should institute a system to monitor and check their work.

The bankruptcy clerk should institute safeguards to be included in the procedures used by others.

For example, if the debtor or a third party is to process proofs of claims and produce the claims register, they may be required to issue an acknowledgment when a proof of claim is filed. The notice of the meeting of creditors could state that acknowledgments are to be issued for proofs of claims and that if a creditor does not receive one within a week after filing a proof of claim, the creditor should contact the bankruptcy clerk.

Another example of a safeguard would be to require that the third party submit updated copies of the claims register or mailing matrix to the bankruptcy court on a weekly basis.

3. Filing. Proofs of claim or interest, complaints, motions, applications, objections, and other case papers shall be filed with the bankruptcy clerk's office which, after noting receipt, upon order of the court, may transmit case papers to an outside entity for maintenance.

Comments: Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim or interest, complaints, motions, applications, objections, and other case papers be filed with the bankruptcy clerk of court in the district where the case is pending, except as specified by section 1409 of title 28 and except as a judge permits papers to be filed with the judge.

The bankruptcy court should assure itself of the integrity of the procedures before directing that proofs of claim or interest, or other case papers be transmitted to a third party.

If all case papers are filed in the bankruptcy clerk's office and stamped with the date received, the papers can be picked up by the debtor or a third party for processing at another location. The bankruptcy clerk can copy some papers to make spot checks of their processing by the debtor or a third party.

The bankruptcy clerk can obtain a special post office box for the receipt of proofs of claim in "mega cases." This separates the proofs of claims from other mail and speeds processing.

4. Disposition. The bankruptcy clerk remains responsible for the disposition of case papers after the conclusion of a case in which the bankruptcy court has directed the debtor or a third party to maintain the records.

Comments: Although the order which directs the debtor or a third party to maintain records does not necessarily have to provide for their disposition, the bankruptcy clerk should begin planning for records disposition early in the case.

5. Claims. If debtors or third parties are directed to process proofs of claim and maintain the claims register, they should be directed to perform related functions such as recording transfers of claims and giving notices of transfer.

Comments: Bankruptcy Rule 3001(e)(2),(3), and (4) requires notices of certain transfers of claims. The party which processes proofs of claim and maintains the claims register is best able to give the notices. Bankruptcy Rule 3001 requires that the court enter an order on many transfers. The original notices and orders should be placed in the case files.

Bankruptcy Rule 3004 requires notice to the creditor when the debtor or trustee files a claim in the name of the creditor. The party that processes proofs of claim and maintains the claims register is best able to provide the notice.

6. Public records. Section 107 of the Bankruptcy Code provides that the papers filed in bankruptcy cases and the bankruptcy court's dockets are public records unless the bankruptcy court orders otherwise. Case papers such as proofs of claim remain public records even if the debtor or a third party is directed to process and maintain those records.

The bankruptcy clerk should ensure that those records are open to examination at reasonable times without charge.

Comments: Case papers processed and maintained by the debtor or a third party at a location outside the bankruptcy clerk's office should be available for review at that location during normal business hours.

Because it may often be impractical for parties to review case papers where the papers are processed and maintained, the bankruptcy clerk should attempt to make as much information available as is possible.

As an example, if a third party or the debtor processes proofs of claim and interest and generates the claims register, the third party or the debtor should furnish copies of the updated claims register to the bankruptcy court at least weekly.

7. Waivers. Personnel employed by the estate to assist the bankruptcy clerk's office are not government employees. They should not be administered oaths of office although they may be asked to sign a waiver of any right to compensation by the government. Because such personnel are not government employees, the bankruptcy clerk may not fire them.

Comments: There is no need to administer an oath of office to personnel paid by the estate to assist the bankruptcy clerk's office in processing a case. Administering an oath to such personnel fosters the false impression that they are government employees.

Administering an oath to a new government employee impresses the employee with the obligations of office and triggers certain restrictions on the employee's activities. A written waiver including a statement of the obligations of personnel employed by the estate to assist the bankruptcy clerk's office is less suggestive of government employment.

The bankruptcy clerk should request that special employees sign a written waiver of any right to receive compensation from the government, civil service retirement credit, or other benefits of government employment. The waiver should also include an acknowledgment that the special employee is to be paid by the estate, is directly accountable to the bankruptcy clerk, and will not receive instructions, directions, or orders from the debtor or the trustee.

The waiver should also specify that the special employees will refrain from discussing pending or impending cases, will not disclose confidential information received during the course of their employment, and will not profit from such confidential information. These obligations are included in the code of conduct for clerks, which requires that the clerks impose these specific obligations on their staffs.

8. Supervision. The bankruptcy clerk is responsible for supervising the work of personnel employed by the estate to assist the bankruptcy clerk's office.

Comments: The bankruptcy clerk of court may select personnel to be employed by the estate to work in the bankruptcy clerk's office pursuant to section 156(c). If authorized by the order directing the estate to employ the personnel, the bankruptcy clerk may specify the terms of their employment. Due to the nature of such special employees' work, the bankruptcy clerk or a designated deputy clerk should supervise their work.



For the ease of supervision, it is desirable that the special employees work in the bankruptcy clerk's office if sufficient space is available. This also makes it easier to maintain security for the case papers processed by the special employees.

9. Favoritism. Personnel employed by the estate to assist the bankruptcy clerk's office may not provide special services for the debtor or the trustee. The bankruptcy clerk should strive to avoid any appearance that these personnel favor the debtor or any other party while performing official duties.

Comments: While they are assisting the bankruptcy clerk's office, special employees should not be in contact with the debtor, except on official business or to receive their paychecks. They should not receive instructions, directions, or orders from the debtor or the trustee.

The bankruptcy clerk should strive to avoid any impression that the special employees favor the debtor or any other party in their work for the bankruptcy clerk's office. For this reason, the special employees should not work in the debtor's business and assist the bankruptcy clerk's office at the same time. It is desirable that the special employees not be former employees of the debtor.

## FACILITIES

10. Equipment. Any equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court.

Comments: Because section 156(c) prohibits charging the cost of such equipment, furniture, or other facilities to the United States, the bankruptcy clerk should explain to the seller or lessor that the estate - - not the bankruptcy court -- is responsible for payment.

## SERVICES

11. Copies. If the bankruptcy clerk selects a commercial copy service to provide copies of papers in one or more cases, the bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection. The bankruptcy clerk should request written proposals for the work as part of the clerk's determination of which commercial copy service is best qualified to provide such a service. If the cost of the copies is expected to total more than \$25,000, the bankruptcy clerk should make a formal solicitation of written proposals for the work. If a very large case is filed without advance notice, the bankruptcy clerk may not have time to solicit formal written proposals for the copy services. In such an instance, the clerk may solicit proposals orally and document the solicitation and responses.

Comments: The bankruptcy clerk's office may not be able to efficiently handle the volume of copy requests in a "mega case." With planning and the bankruptcy clerk's assistance, a private copy service may be able to provide copies of case papers at a lower price than the bankruptcy clerk's office. This saves time for the bankruptcy clerk's office and saves money for the parties. The time

savings is particularly important in "mega cases," in which copy requests could otherwise require much of the bankruptcy clerk's office's time.

The bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection of a copy service to provide copies in a "mega case." The bankruptcy clerk should make at least an informal survey to determine which copy service is best qualified to provide copies on the basis of reliability, price per copy, and additional services to be provided such as maintaining a duplicate file for review by the public.

Advertising is required for most government purchases of more than \$25,000 by 41 U.S.C. § 5. Although the bankruptcy court's designation of a copy service is not a government purchase of services, it does convey a valuable business opportunity.

Basic fairness requires that all qualified copy centers be allowed to submit proposals if the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year. If time permits, the bankruptcy clerk should send written requests for proposals to each of the local copy services which are capable of performing the work in a timely manner. If time permits and the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year, copies of all of the written proposals should be sent for review to the Contracts Branch of the Contracts and Services Division of the Administrative Office before a particular proposal is selected.

Proposals for making copies should be solicited on a contingent basis before a "mega case" is filed. If it has not been done, the request for proposals can be conveyed orally or hand-delivered with instructions that they be returned within 48-hours.

The order designating the copy service can also require that the parties file an extra copy of all case papers except proofs of claim. The intake and docket clerks can process the copies along with the originals and the copy service can pick up the copies and an updated docket sheet once a day. The parties can then order copies by docket numbers or can place standing orders for copies.

The request for proposals should require the copy center to maintain a duplicate case file from which copies will be made. The request may also require that the copy center make the duplicate file available for review without charge during normal business hours.

## NOTICES

12. Mailing lists. A debtor in a voluntary case must file a list containing the names and addresses of its creditors, even if the debtor or a third party is ordered to mail all notices in the case. If the debtor or a third party is directed to maintain the mailing matrix in a case, it shall make copies of the matrix available as requested by other parties or the bankruptcy court.

Comments: Bankruptcy Rule 1007(a) requires that debtors in voluntary cases file mailing lists with their petitions unless the petitions are accompanied by schedules of liabilities or chapter 13 statements. Other parties may need to review the list. Another party or the bankruptcy clerk's office may need the list in order to provide a notice.

In certain circumstances the bankruptcy court may permit the debtor to file the mailing list in the form of a computer tape. The bankruptcy clerk shall take steps to insure that the mailing list is maintained properly and that it is protected against loss or damage.

13. Certificate of service. The bankruptcy court or the bankruptcy clerk should approve the form and content of any notice not provided by the bankruptcy clerk's office and should receive from the person providing notice a certificate of service which includes a copy of the notice and a list of persons to whom it was mailed.

Comments: Pursuant to the Bankruptcy Noticing Guidelines adopted by the Judicial Conference in March 1986, the parties shall file certificates of service for the notices which they provide. If counsel for the party signs a certificate of service, the certificate may generally state that notice was given to certain parties (such as the parties on the mailing matrix as of a certain date). If someone else signs the certificate, the certificate shall be accompanied by a list of the names and addresses of the parties served.

To ease the burden of reviewing the form and content of notices not prepared by the bankruptcy clerk's office, the bankruptcy clerk and the bankruptcy court can develop form notices for various circumstances. The bankruptcy court can specify the required contents for certain notices in its local rules.

#### MISCELLANEOUS

14. Assistance. The Bankruptcy Judges Division of the Administrative Office should be consulted when unusual questions or problems arise concerning outside facilities or services.

Comments: "Mega cases" often present unusual questions or problems such as the need to hire additional personnel on an expedited basis or to address unique circumstances in the meeting of creditors notice. The Bankruptcy Judges Division can either answer the questions or refer them to the appropriate office.